

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.536 of 2023

1. The State of Bihar through Collector, Siwan, District Siwan.
2. The Commissioner, Saran Division Chapra, Post Office Chapra, Police Station Chapra, District Chapra.
3. The Collector, Siwan, Post Office, Siwan, Police Station Siwan Town, District - Siwan.
4. The Superintendent of Police, Siwan, Resident Office Siwan, Post Office Siwan, Police Station Siwan, District Siwan.
5. The Deputy Collector Land Reforms (D C L R), Siwan, Post Office Siwan, Police Station Siwan Town, District - Siwan.
6. The Anchaladhikari, Husainganj, Post Office Husainganj, Police Station Husainganj, District Siwan.
7. The Officer In Charge, Sarai (O.P.) Police Station Sarai, Post Office Siwan, Police Station O.P. Sarai, District Siwan.

... .. Petitioner/s

Versus

1. Lal Babu Prasad, Son of Late Baijnath Prasad, Resident of mohalla Chaka Bazar, Post Office Siwan, Police Station Siwan Town, Anchal Siwan, District Siwan.
2. Rajendra Prasad, Son of Late Baijnath Prasad, Proprietor M/s. Roop Shree General Store, Near Bari Masjid, Siwan. Resident of mohalla Chaka Bazar, Post Office Siwan, Police Station Siwan Town, Anchal Siwan, District Siwan.
3. Md. Sahil Eqbal, Son of Md. Nasim, resident of Mohalla Sheikh Mohalla, Post Office Siwan, Police Station Siwan Town, District Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Uday Shankar Sharan Singh, G.P.19
For the Respondent nos. 1 &2:		Mr. Chandra Kant, Advocate
		Mr. Ravi Bhushan Bharat, Advocate
		Mr. Navin Kumar, Advocate
For Respondent no.3	:	Mr. Prakash Ojha, Advocate
		Mr. Bijay Prakash, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 29-02-2024

The instant petition has been filed under Article 227 of
the Constitution of India for quashing the order dated



05.01.2023 passed in Misc. Appeal No. 16 of 2022 by the learned District Judge, Siwan whereby and whereunder the learned District Judge, Siwan set aside the order dated 01.09.2020 passed by the learned Sub Judge, XIII, Siwan in Title Suit No. 687 of 2011 and passed an order for maintaining *status quo* till disposal of Title Suit No. 687 of 2011.

2. Briefly stated, facts of the case are that the plaintiffs/appellants/respondents 1st set filed Title Suit No. 687 of 2011 for declaration of their title and for restraining the defendants from dispossessing them from the suit land with further prayer to restrain the defendants from changing the physical feature of the land. Petitioners are defendants before the learned trial court and respondents before the learned appellate court. The plaintiffs claimed that the suit land is a *Gairmajarua Malik* and Noor Mohamad and Noorul Ain were the ex-landlords settled the entire land of Survey Plot Nos. 175 and 176 under Khata No. 363 in favour of one Azimuddin Mian and handed over the possession on payment of rent before vesting of *Jamindari*. Said Azimuddin Mian had taken loan from one Kamla Pandey who filed Money Suit No. 419 of 1953 for the recovery of loan amount which was decreed. Thereafter, Execution Case No. 395 of 1954 was filed and one Most.



Marachhia purchased the suit land having area of 14 *katha* 2 *dhur* in auction sale. Thereafter, the suit land was partitioned amongst the sons of Most. Marachhia who executed seven sale deeds on different dates with regard to 9 *katha* 4 *dhur* in the name of parents of the plaintiffs and handed over the possession of the suit land. After death of their parents, the plaintiffs came into possession of the suit land and their names have been mutated in the revenue record and *Jamabandi* was created in the name of the plaintiffs and they started paying rent to the State of Bihar which continued till 2006 and last rent receipt was issued on 10.02.2006.

3. The suit was contested by defendant State by filing written statement in which they denied all the claims of the plaintiffs and further asserted that as per the Survey *Khatiyani*, Survey Plot No. 175 is recorded as '*graha*' (pond) and Suvery Plot No. 176 is recorded as part of '*parti kadeem*' under *Gairmazarua Malik* Khata No. 383. The defendants further claimed that after vesting of the *Zamindari* in the State of Bihar, the State Government became the lawful owner of the aforementioned two plots. The defendants further contended that no *Jamabandi* was ever created in the name of private person and no one has been paying rent and no official has been



receiving rent from any private person. It was further submitted in the written statement that the major portion of Survey Plot No. 175 was being used for public purposes and as there was need to construct a building for Sahayak Thana, Sarai, a proceeding for transfer of the land was initiated and after spot inspection, the land was found fit for transfer to the Police Department and it was finally transferred on 07.06.2011 and possession has been given to Police Department which started the construction of building of Sahayak Thana, Sarai. Thus, the defendants claimed that the plaintiffs have no right, title and possession over the land in question.

4. On 12.08.2022, an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure (hereinafter 'the Code') has been filed by the plaintiffs with a prayer that defendants be restrained from changing the present status of the land in question and they be further restrained from making any construction of any building or to sale out the land in question.

5. Earlier on 28.03.2012, plaintiffs filed an application under Order 26 Rule 9 of the Code for appointment of Pleader Commissioner with direction to submit a report with regard of status of land in question. On 23.08.2022, the Pleader Commissioner submitted his report before the learned Sub



Judge-XIII, Siwan in which he specifically stated about construction activities on Plot Nos. 175 and 176. After hearing the parties and perusing the Pleader Commissioner's report, the learned Sub Judge-XIII, Siwan rejected the application filed by the plaintiffs under Order XXXIX Rule 1 and 2 of the Code though holding that there was *prima facie* case in favour of the plaintiffs yet relying on the Pleader Commissioner's report that plaintiffs were not in possession on the Plot Nos. 175 and 176 and as such no irreparable loss would be caused to the plaintiffs and thus dismissed the injunction application of the plaintiffs.

6. Against the said dismissal order, plaintiffs preferred Misc. Appeal No. 16 of 2022 before the learned District Judge, Siwan and the learned District Judge, Siwan, after hearing the parties, set aside the order passed by the learned Sub Judge-XIII, Siwan vide its order 05.01.2023 and further directed both the parties to maintain status quo till disposal of the Title Suit No. 687 of 2011. This order has been assailed before this Court.

7. Mr. Uday Saran Singh, learned counsel appearing on behalf of the petitioners submitted that the impugned order is bad and has been passed without application of judicial mind. The learned District Judge, Siwan has not appreciated the fact that no *Jamabandi* was existing in the name of the plaintiffs.



The learned District Judge, Siwan has further not considered that the plaintiffs pleaded oral statement and oral sale by their predecessor in interest in title which ought to have considered in convention with non-existing *Jamabandi* and thus, there was no *prima facie* case. The execution of seven sale deeds are subsequent attempts along with forged rent receipts without actual possession of the suit land. The nature of suit land is 'garha' (pond) and 'parti kadeem' and was admittedly entered into *Khatiyani* and in absence of *Jamabandi*, the learned appellate court should have considered that it created a credible case of vesting of the suit land in the State Government on abolition of *Zamindari*. The construction of thana building after transfer to the Police Department tilted the balance of convenience in favour of the petitioners. Learned counsel further submitted that in this manner three ingredients of *prima facie*, balance of convenience and irreparable loss and injury were shown in favour of the petitioners. Learned counsel further submitted that while passing the impugned order, learned District Judge, Siwan failed to deal with plea and contentions of the petitioners/defendants. Learned District Judge further failed to weigh the opposing claims and the impugned order only narrated the plea of the defendants but did not supply reasons



for arrival of decision to allow the appeal. Learned counsel further submitted that Plot Nos. 175 and 176 were recorded in R.S. *Khatian* as *Gairmazarua Malik* land and the said land vested in the State Government at the time of abolition of *Zamindari* and the State Government came into its possession. Most. Marachhia has no right, title and interest in Plot Nos. 175 and 176. The sale deeds were executed by the persons who have no title over Plot Nos. 175 and 176 and such deeds remained inoperative and the purchasers never came in its possession of any part of Plot Nos. 175 and 176. The alleged purchasers did not mutate the land in their names and *Jamabandi* is not running in the name of any such persons. The State Government never issued rent receipt to them for payment of rent. The *Jamabandi* No. 1440 is running in the name of Harilal and Awadhesh Singh over the land of Khata No. 126, R.S. Plot Nos. 3977 and 4000. Learned counsel further submitted that disputed land of Khata No. 383, R.S. Plot No. 175 having area of 14 *katha* stands recorded 'garha' (pond) and R.S. Plot No. 176 having area of 1 *katha* 18 *dhur* stands recorded as '*parti kadeem*'. Thus, the learned counsel submitted that the plaintiffs have got no right, title and possession over the disputed land which has been legally transferred to the Police Department for construction of



building of Sahayak Thana, Sarai. On the other hand, the police department has right, title and interest in the disputed land and it is in its possession. The Pleader Commissioner's report also shows the plaintiffs are not in possession of Plot Nos. 175 and 176 but the learned appellate court without considering the Pleader Commissioner's report passed the impugned order. Learned counsel thus submitted that it is very much clear that the plaintiffs have no *prima facie* case or balance of convenience in their favour and they are not going to suffer any irreparable loss. For this reason order of status quo granted by the learned appellate court is not sustainable and the same needs to be set aside.

8. Mr. Chandra Kant, learned counsel appearing on behalf of plaintiffs/appellants/respondents 1st set vehemently contended that there is no infirmity in the impugned order of the learned appellate court and the same needs to be sustained. Reiterating the facts of the case before the learned trial court in the plaint. Learned counsel submitted that after the decree passed in Money Suit No. 419 of 1953 filed by Kamla Pandey, Execution Case No. 395 of 1954 was filed in which auction took place and purchaser was Most. Marachhia and her delivery of possession was confirmed on 21.01.1955 over 14 *katha* 2 *dhur* of Khata



No. 383, Khesra No. 175 in lieu of Rs. 175. Learned counsel further submitted that Khesra No. 176 was connected from two sides with Khesra No. 175 which was a '*garha*' (pond) and ultimately Khesra No. 176 also got converted into '*garha*' (ditch) and did not remain fit for agricultural purpose. Azimuddian Mian who got the Khesra Nos. 175 and 176 in settlement from ex-landlord, entered into oral transfer of land having area of 1 *katha* 18 *dhur* of Khesra No. 176 to Most. Maracchia who came into possession of total land of Khesra No. 175 and 176. Four sons of Most. Marachhia by way of registered sale deeds transferred 9 *katha* 4 *dhur* land to the parents of the plaintiffs by way of seven sale deeds which were dated from 21.04.1982 to 28.04.1984. In the month of June, 1990 when the plaintiffs and their mother started putting a boundary wall on their land of Khesra Nos. 176 and 177, the Public Works Department gave a notice for encroachment which was subsequently dropped on 30.08.1990. Learned counsel further submitted that the plaintiffs got the land of Khesra Nos. 175, 176 and 177 having area of 9 *katha* 4 *dhur* mutated in their favour and *Jamabandi* no. 1440 was created in circle Hussainganj after Mutation Case No. 524 of 2002-04 and last rent receipt was issued on 10.02.2006. After death of their



mother, the plaintiffs tried to get the mutation done in their name and also tried to get the rent receipt but mutation was not allowed.

9. Learned counsel for the plaintiffs further submitted that it is a settled principle of law that during pendency of the *lis*, the suit property should remain intact so that at the time of final adjudication, the party getting the decree can enjoy its fruits. Learned counsel further submitted that the defendants presumed title on the basis of *Khatiyān* which was prepared in the year 1919 and the defendants are under the impression that for more than 100 years, the situation did not change. The plaintiffs have shown a *prima facie* case in their favour by showing complete chain of transfer of land and from start when the land was transferred from ex-landlord Noor Mohamad and Nurul Ain to Azimuddian Mian to Most. Marachhia and thereafter to the parents of the plaintiffs. Since ex-landlord had no right at the time of vesting of *Zamindari*, evidently, the *prima facie* case is in favour of the plaintiffs who have shown their continuous title and possession since 1955. Further, the suit land never came in possession of the State Government whereas title and possession of the plaintiffs or their vendors have been continuing since 1955. In order to dent the claim of the plaintiffs, the State has



manipulated the records. The learned counsel further submitted that the title of the plaintiffs is based on auction sale of 1954 and the claim of title of defendants is based on R.S. *Khatiyani* of the year 1919. But several changes have made during this period. Plaintiffs has filed on record rent, suit paper, mutation order document. State has mutated the land in favour of the plaintiffs and has realized rent. All these factors would act as estoppel against the State. Thus, balance of convenience is also in favour of the plaintiffs.

10. Learned counsel for the plaintiffs further submitted that now as *prima facie* case and balance of convenience is in favour of the plaintiffs, allowing the State to raise construction over the suit land would naturally cause irreparable loss to the plaintiffs even if State is the defendant in the suit. If injunction is not granted in favour of the plaintiffs and State is allowed to make construction, it would amount to grant of the ultimate relief to the State. Obviously the same would cause irreparable loss to the plaintiffs

11. Learned counsel further submitted that it is settled principle of law that if a *lis* has been admitted for adjudication, it becomes the duty of the court to preserve the subject matter of the litigation by an appropriate order so that the same available



at the time of final adjudication and the decree does not become a barren one and relied on the decision of this Court in the case of ***Dharm Nath Ojha & Ors. Vs. Raghunath Ojha***, reported in ***(2001) 2 PLJR 268***. Learned counsel further relied on the decision of the Hon'ble Supreme Court in the case of ***Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass***, reported in ***(2004) 8 SCC 488 : AIR 2005 SC 104***. Paragraph 10 of this decision reads as under:-

“10. Be that as it may, Mr Sachar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be the conditions on which the same is done. In the



event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored.”

12. Learned counsel further placed reliance on a decision of this Bench in the case of **Anand Prasad Sharma & Anr. Vs. Sri Nagendra Singh & Ors.**, reported in **2024 SCC OnLine Pat 218**, on the proposition that balance of convenience would lie in favour of person who wants to preservation of the suit property compared to the other side who wants to change the nature of the suit property and that unless the dispute is decided by the learned trial court the suit property needs to be preserved. Learned counsel submitted that on the similar aspect of the matter a decision of the Co-ordinate Benches of this Court in the cases of **Rampujan Mahato Vs. Kokil Mahato & Ors.**, reported in **2023 (3) BLJ 470** and **Ravi Poddar Vs. M/s. Mitra Mandal Sangathan, through its President, Kali Das Singh & Ors.**,



reported in **2023 (5) BLJ 738** wherein this court has held that injunction should be granted to protect the property. Learned counsel also relied on a decision of this Court in the case of **Savitri Devi vs. Rajo Devi & Anr.**, reported in **(2006) 3 PLJR 454** wherein it has been held that the court was obliged to restore *status quo* as on the date of filing of the injunction application if it was after due notice to the other side and the court further observed that notwithstanding the fact that there was no *status quo* order, restoration of *status quo* was obligatory otherwise judicial process would become infructuous.

13. Thus, the learned counsel submitted that from the pleadings of the plaint as well as documents filed on behalf of the plaintiffs, it is clear that the plaintiffs have *prima facie* case and balance of convenience also lies in their favour since the plaintiffs have right and title over the suit land and the appellate court has considered the entire documents and came to the conclusion that plaintiffs were having *prima facie* case and balance of convenience also lies in their favour and thus injunction was granted against the defendants restraining them from raising construction since it would have caused irreparable loss to the plaintiffs

14. Learned counsel for the petitioners/defendants, by



way of reply, submitted that the documents relied on by the plaintiffs are not correct. The copy of suit register of execution case does not show it relates to Plot Nos. 175 and 176 of Khata No. 383. Further, the mutation document of the plaintiffs shows purchase of 18 *dhur* land of Plot No. 175 by father of the plaintiffs. Even the details of Mutation Case No. 524 of 2002-04 are not correct since the said case stands in the name of Smt. Chandani Devi and it is with respect to Plot No. 2003 of Khata No. 231. Learned counsel further reiterated that *Jamabandi* No. 1440 was not running in the name of mother of plaintiffs and the same appears from Register-2 to be in the name of Harilal and Awadhesh Singh and it relates to Khata No. 121.

15. I have given my thoughtful consideration to the rival submission of the parties. The claim of the petitioners is based on settlement of the suit land by ex-landlords prior to vesting of *Zamindari* to one Azimuddian Mian whose land was later on purchased in auction sale by the vendors of the plaintiffs who also got certain portion of suit land through oral sale by same Azimuddian Mian. There is no dispute over title of ex-landlord. Thereafter, documents have been brought on record showing mutation and issuance of rent receipt in favour of plaintiffs. On the other hand, only claim of the State over the suit land is some



entry in *Khatiyān* of 1919 showing the nature of land to be 'Gairmazurua Malik' with description as 'garha' (pond) and 'parti kadeem'. Thereafter, there are no documents during *interregnum* in favour of the State/defendants who are petitioners herein. Whatever claim has been made by the defendants/petitioners against the documents of plaintiffs/respondent 1st set, the same are yet to be established and all such claim regarding veracity of the documents and allegations of forgery or manipulation by either of the parties would be looked into by the learned trial court and cannot be given much significance at this stage. But *prima facie* the documents indicate title of the plaintiffs and not of the State Government. Further, creation of *Jamabandi* and issuance of rent receipts are other instances showing possession of the plaintiffs. If any new construction is erected on the suit property, the same could be considered as causing irreparable loss to the plaintiffs. The Hon'ble Supreme Court in the case of ***Maharwal Khewaji Trust (Regd.), Faridkot (supra)*** has held that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of property to be changed which also includes alienation or transfer of the property which may lead to loss or damage being



caused to the party who may ultimately succeed and which may further lead to multiplicity of proceedings. The learned trial court as well as learned appellate court, both, have also found *prima facie* case in favour of the plaintiffs. Once a *prima facie* case in favour of the plaintiffs have been found, on preponderance of documents of possession balance of convenience would tilt in favour of the plaintiffs notwithstanding the report of Pleader Commissioner which was submitted after 10 years of his appointment. Allowing a new construction over the suit land at this stage would clearly mean changing the nature of suit property thereby causing irreparable loss to the plaintiffs. So it becomes the duty of the court to preserve the suit property till disposal of the suit. Since the defendants/ petitioners have failed to show any *prima facie* case or balance of convenience in their favour, they have been rightly directed by the learned appellate court to maintain *status quo* on the suit property till disposal of the Title Suit No. 687 of 2011.

16. Without going into further details of the case, on the basis of discussion made so far, I am of the opinion that three ingredients for grant of injunction under Order XXXIX Rule 1 and 2 of the Code are in favour of the plaintiffs and, therefore, I do not find any infirmity in the order dated 05.01.2023 passed



by the learned District Judge, Siwan in Title Appeal No. 16 of 2022 and the same is affirmed.

17. Accordingly, the instant petition stands dismissed.

18. However, it is made clear that this Court has not made any comments on the merits of the case before the learned trial court which would proceed to dispose of the suit before it within a period of one year from the date of receipt/production of a copy of this order uninfluenced by any observation made by this Court.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
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