

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.380 of 2021**

1. Anand Prasad Sharma S/o Devendra Prasad Sharma, R/o Village-Berhna, Tola-Jahidpur, P.O.-Berhna, P.S.-Barh, District-Patna.
2. Smt. Bimla Devi W/o Sri Devendra Prasad Sharma, R/o Village-Berhna, Tola-Jahidpur, P.O.-Berhna, P.S.-Barh, District-Patna.

... .. Petitioner/s

Versus

1. Sri Nagendra Singh S/o Late Jangbahadur Singh R/o Village-Berhna, Tola-Jahidpur, P.O.-Berhna, P.S.-Barh, District-Patna.
2. Mahendra Sharma @ Mahendra Singh S/o Late Lakhan Singh R/o Village-Berhna, Tola-Jahidpur, P.O.-Berhna, P.S.-Barh, District-Patna.
3. Gaurav Kumar @ Gaurav, S/o Sri Mahendra Sharma R/o Village-Berhna, Tola-Jahidpur, P.O.-Berhna, P.S.-Barh, District-Patna.
4. Jitu Kumar @ Jitu, S/o Sri Mahendra Sharma R/o Village-Berhna, Tola-Jahidpur, P.O.-Berhna, P.S.-Barh, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Akash Shankar, Advocate
For the Respondent/s : Mr. Alok Anand, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date :19-01-2024

The petitioners have filed the present petition seeking following relief(s):-

i. Setting aside the order dated 06th July, 2021 passed by Learned Additional District & Sessions Judge-I, Barh in Miscellaneous Appeal No. 43/2018; Tr. No. 02/2019 whereby the appeal has been dismissed, affirming the order dated 22nd February 2018 passed by Learned Sub Judge-III, Barh in Title Suit No. 149/2015 by which injunction application dated 10th October 2017 filed by the



Plaintiffs/Appellants/Petitioners has been rejected.

ii. Setting aside the order dated 22nd February 2018 passed by Learned Sub Judge-III, Barh in Title Suit No. 149/ 2015 by which injunction application dated 10th October, 2017 filed by the Plaintiffs/Appellants/Petitioners has been rejected.

iii. Issuance of direction to the Defendant 1st Set/Respondent 1st Set/Respondent 1st Set to maintain status quo over the suit land during the pendency of the instant application.”

02. The petitioners are plaintiffs before the learned trial court and they filed Title Suit No. 149 of 2015 for declaration of right and title of the plaintiffs over the suit land and further for declaration that the sale deed dated 13th September, 2010 executed by the defendant no. 2 in favour of defendant no. 1/respondent-1st set with respect to the suit land is *void ab initio*.

03. The case of the plaintiffs is that the land in questions of Plot No. 2552 along with further 27 decimals of land out of Survey Plot No. 2551 belonged to one Mahendra Sharma, i.e., defendant no. 2, who sold the total 37 decimals of land to plaintiff no. 2 through registered sale deed dated 05.03.1982, but by mistake, total area was mentioned as 27



decimals in place of 37 decimals although the boundary was correct and plaintiff no. 2 was put in possession after execution of the sale deed in 1982 and she has been coming in peaceful possession over the land in question besides other land. The plaintiff no. 2 after purchase of the suit land as well as other lands amalgamated two plots, i.e., Plot No. 2551 and Plot No. 2552 and planted several trees of Mangoes, Teak and Jack fruit. The plaintiffs further claimed that due to mistake of the scribe, the suit land was left to be mentioned in the sale deed dated 05.03.1982 and plaintiffs asked defendants-2nd set in the month of June, 2010 for correction in the sale deed who created an agreement for sale on 30.06.2010 with regard to suit property. Thereafter, on plaintiffs' further request, the defendants-2nd set corrected the mistake and the defendants-2nd set executed a deed of sale dated 29.01.2015 in favour of the plaintiff no. 1 admitting the previous sale. However, in the first week of January, 2015, the plaintiffs came to know about purported sale deed dated 13.09.2010 executed by the defendant no. 2 in favour of defendant no. 1, when defendant no. 1 threatened the plaintiffs to cut the old planted trees of the suit land. Thereafter, on 20.01.2015, defendant-1st set gave an application before the *Sarpanch* of *Gram Kachahri, Berhna* for recovery of possession



of the suit land from husband of the plaintiff no. 2 and *Gram Kachahri* Case No. 01 of 2015 was registered by the *Sarpanch*.

04. On the other hand the plaintiffs/petitioners filed Title Suit No. 149 of 2015 for declaration of his title over the suit land and also for declaration of sale deed dated 13.09.2010 to be *void-ab-initio* with respect to suit property. After filing of the suit, the defendants appeared and filed their written statement. The defendant- 1st set contended that he has in possession over the suit land after getting his name mutated in the Government record. It was further contended that sale deed dated 05.03.1982 was executed by the defendant no. 2 in favour of plaintiff no. 2, that too, only with respect of 27 decimals of land appertaining to Plot No. 2551. However, wrong fact has been mentioned in the sale deed and no sale deed was executed with respect to Survey Plot No. 2552. It was further contended that plaintiff no. 2 came in possession of only 27 decimals of land in Plot No. 2551 and not 37 decimals. The defendant-1st set further claimed that when the defendants-2nd set executed registered sale deed on 13.09.2010 with respect to suit land in favour of defendant no.1, after the execution of sale deed, the defendant no. 2 had no right in the suit land and could not have transferred the same and the sale deed dated 19.01.2015



executed by the defendant no. 2 in favour of the plaintiff no. 1 has got no value. However, the defendants-2nd set in their written statement supported the case of the plaintiffs.

As the threat extended by the defendant-1st set continued and he started cutting the branches of the trees, the plaintiffs filed an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (for short 'the Code') on 10.10.2017. The rejoinder to this application was filed and after hearing the parties, the learned trial court rejected the application of the plaintiffs on the ground that plaintiffs failed to prove *prima facie* case in their favour and thereafter did not discuss and consider the other two ingredients for grant of injunction. Being aggrieved and dissatisfied with the order of learned trial court, the plaintiffs filed Misc. Appeal No. 43 of 2018. It was also dismissed vide order dated 06.07.2021. Aggrieved by the aforesaid orders of dismissal of their injunction petition, the plaintiffs have preferred the instant petitioner under Article 227 of the Constitution of India.

05. Learned counsel appearing on behalf petitioners/plaintiffs submitted that orders of the learned courts below are not sustainable as the same have been passed without consideration of materials available on record. The learned



courts below lost sight of the fact that it is the primary duty of the court to preserve the suit property so that the decree holder gets the fruits of the decree. The court has to preserve the subject matter of litigation by passing appropriate orders so that the suit property is available at the time of final adjudication and the decree does not become barren one. In the present case, if the defendant-1st set is not restrained from cutting the trees, then nothing would remain after the final decision of the case. The learned courts below have also not taken into consideration the observation made by the Hon'ble Apex Court time and again that consideration of the 'triple test' is mandatory and the learned courts below were required to consider all the three ingredients for grant or refusal of injunction and the orders not so considering the ingredients are bad in the eye of law and fit to be set aside. Learned counsel for the petitioners/plaintiffs further submitted that the sale-deed has been executed in 1982 and it has been rectified in the year 2015 in favour of the plaintiffs. Unless, rectified deed of the year 2015 is set aside by a competent court, the plaintiffs are entitled for grant of injunction under Order 39 Rule 1 and 2 read with Section 151 of the Code during pendency of the Title Suit No. 149 of 2015. Thus, the learned counsel submitted that the order dated



06.07.2021 passed by the learned Additional District & Sessions Judge-I, Barh in Misc. Appeal No. 43 of 2018, whereby the appeal has been dismissed by affirming the order dated 22nd February, 2018 passed by the learned Sub Judge-III, Barh in Title Suit No. 149 of 2015 is liable to be set aside and the respondents be directed to maintain *status quo* over the suit land during pendency of the title suit before the learned trial court.

06. Learned counsel appearing on behalf of respondent/defendant-1st set vehemently contended that the orders of the learned courts below do not suffer from any infirmity and the same have been passed after due consideration of the materials before the learned courts below. Learned trial court as well as learned appellate court dismissed the petition filed on behalf of the plaintiffs/petitioners after due opportunity of hearing has been given to the parties and detailed orders have been passed rejecting the claim of the petitioners/plaintiffs. Learned counsel further submitted that it is not believable that the defect in the sale deed came to the notice of the plaintiffs after lapse of 33 years. The respondent 1st set got title and possession of the suit land by a registered sale deed in year 2010. Even as per plaint, the plaintiff got the knowledge in the year 2010 about the sale deed but he waited for five years



before filing the present suit. Learned counsel for the respondents/defendants further submitted that the plaintiffs/petitioners' evidence has been closed and now the defendants have been examining their witnesses before the learned trial court. Since the trial is at the advance stage and this juncture grant of injunction will cause irreparable loss to the respondent/defendant-1st set. Being in title and possession, the respondent-1st set has got a *prima facie* case in his favour. Further 'balance of convenience' is in his favour, any injunction would cause irreparable loss/injury to the respondent/defendant no.1. Learned counsel further submitted that it is the settled law that if the trial court and the appellate court have rejected the petition, then there is much little scope for granting the injunction by the High Court. Learned counsel for the respondent/defendant 1st set further submitted that after the sale deed was executed in favour of defendant/respondent 1st set in January, 2015, subsequent act of defendant no. 2 in executing another sale deed in the year 2015 in favour of plaintiff/petitioner no. 2 is of no consequence. Thus, the learned counsel for the respondent/defendant 1st set submitted that there is no merit in the instant petition and the same may be dismissed.



07. I have given my thoughtful consideration to the rival contentions of the parties. The claim for injunction by the plaintiffs/petitioners was rejected by both the court below on the ground that the plaintiffs failed to show any *prima facie* case and the learned appellate court has also observed that the plaintiffs have not shown any 'balance of convenience' in their favour or that irreparable loss and injury would be caused to the plaintiffs which could not be compensated in terms of money. But, I think the learned courts below erred while recording their findings. The plaintiffs/petitioners have put a case that they got executed a sale deed in in their favour in 1982 for 37 decimals of land but the sale deed did not mention the measurement of the land and its plot number, but the boundary has been correctly mentioned. No doubt, title will pass on the basis of documents, here on the basis of registered sale deed. But, when the sale deed of the plaintiffs is silent on the measurement and plot number and there has been no dispute till year 2010 over the suit property, it would not be prudent to say that the plaintiffs have got no case and the *prima facie* case is in favour of defendant/respondent-1st set since three sets of sale deeds are on record. The plaintiffs/petitioners have raised a bonafide dispute over the title of defendant/respondent-1st set. Unless,



the dispute is decided by the trial court, the suit property needs to be preserved. Since there is claim and counter claim of the parties, it is not possible at this stage to give any unequivocal finding as to who is more suited as plaintiffs can be said to have a *prima facie* case in their favour. The learned courts below have also not taken into consideration the facts like Pleader Commissioner's report, deposition of defendant no.1 and proceeding before the *Gram Kachahri* apart from the pleadings on record showing possession of the plaintiffs, which also point towards the *prima facie* case in favour of the plaintiffs. The plaintiffs/petitioners are under apprehension that the defendant/respondent-1st set would cut the trees from the suit land and want injunction in order to preserve the same and to maintain the physical feature of the land with standing trees. On the other hand, the claim of the defendant/respondent-1st set is on the basis of his sale deed. Now, considering the facts regarding grant of injunction and balance of convenience, naturally, balance of convenience would lie in favour of a person who wants preservation of the suit property compared to the other side who wants to cut trees and change the nature of the suit property without showing any urgent need, if both the parties are put on same pedestal. On these two ingredients, the



plaintiffs/petitioners have made out a case for grant of injunction for exercising of discretionary remedy of this Court.

08. Though, this Court is normally reluctant to interfere with the concurrent orders passed by the learned courts below, still the facts of the present case requires interference by this Court. The Hon'ble Supreme Court in the case of *Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Das*, reported in *(2004) 8 SCC 488* 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 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.

09. In the light of aforesaid discussion, I find and hold that the orders passed by the learned courts below are not sustainable. Hence, the order dated 06th July, 2021 passed by the learned Additional District & Sessions Judge-I, Barh in Misc. Appeal No. 43 of 2018 and order dated 22nd February, 2018 passed by the learned Sub Judge-III, Barh in Title Suit No. 149 of 2015 are set aside. Accordingly, the present Civil Misc. petition stands allowed.



10. The parties are directed to maintain *status quo* over the disputed suit property during the pendency of the suit before the learned trial court and the learned trial court would make all efforts to conclude the trial within six months of receipt/production of this order without getting influenced by any of the observation made by this Court.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	22-12-2023
Uploading Date	19-01-2024
Transmission Date	N/A

