

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.708 of 2023**

1. Bhutnath Singh S/o Late Durgalal Rai @ Bhutan Roy R/o Village Laheriyaganj, ward no. 2, P.S.- Madhubani, District- Madhubani.
2. Hari Nath Singh, S/o late Durgalal Roy @ Bhutal Roy R/o Village Laheriyaganj, ward no. 2, P.S.- Madhubani, District- Madhubani.

... .. Petitioner/s

Versus

1. Sanjeet Kumar S/o Late Gokhul Sah R/o Village Laheriyaganj, ward no. 1, P.S.- Madhubani, District- Madhubani.
2. Geeta Devi, W/o Late Shankar, D/o Late Durga Lal Roy @ Bhutai Roy R/o Village Simari, P.S.- Simari, District Darbhanga.
3. Meera Devi, W/o Rajgir Singh, D/o Late Durga Lal Roy @ Bhutai Roy R/o Village Malangiya, P.S. Rahika, District- Madhubani.
4. Baby Devi, W/o Arun Kumar Roy, D/o Late Durga Lal Roy @ Bhutai Roy R/o Village Paryani Pokhar, P.S.- Raj Nagar, District- Madhubani.
5. Punam Devi, W/o Vinod Kumar Singh, D/o Late Durga Lal Roy @ Bhutai Roy R/o Village Kasi Simari, P.S. Simari, District- Darbhanga.
6. Kiran Devi, W/o Sanjay, D/o Durga Lal Roy @ Bhutai Roy R/o Village Gandhi Raj Nagar, P.S. Raj Nagar, District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chandra Kant, Advocate
For the Respondent/s	:	Mr. Vijay Shankar Tiwary, Advocate
		Mr. Suraj Samdarshi, Advocate
		Mr. Avinash Shekhar, Advocate

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

Date : 10-09-2024

The present petition has been filed under article 227 of the Constitution of India for setting aside the order dated 02.05.2023 passed by the learned ADJ 1st, Madhubani in Miscellaneous Appeal No. 13 of 2016 and also for setting aside the order dated 22.11.2016 passed in Title Suit No. 81 of 2011



as the injunction granted in Title Suit No. 81 of 2011 vide order dated 22.11.2016 has been affirmed by the learned appellate court in its order dated 02.05.2023.

02. Briefly stated, the facts of the case are that respondent no. 1 is plaintiff of Title Suit No. 81 of 2011 filed for specific performance of contract. The original defendant Durga Lal Rai was the father of the petitioners who died during the pendency of the title suit. The plaintiff has made averment in his plaint that the original defendant was in need of money for treatment of his wife and thus entered into talk with the plaintiff for purchase of scheduled property of the plaintiff for consideration amount of Rs. 4 lakh. As the plaintiff was only having Rs.3 lakh at that time, the plaintiff apprised the original defendant that after making arrangement for Rs. 1 lakh, he would get the sale deed executed and registered for the scheduled land. Further, at the insistence of the original defendant, the plaintiff paid him Rs. 3 lakh who prepared an agreement of sale (*Mahadanama*) and handed over the possession of the suit land to the plaintiff. The original defendant kept on assuring the plaintiff that he would execute the registered sale deed in his favour after taking Rs. 1 lakh as agreed. But despite numerous attempts by the plaintiff for taking



the balance amount of Rs. 1 lakh and executing the sale deed the original defendant did not transfer the suit land in favour of the plaintiffs towards the specific performance of contract and the plaintiff was compelled to file the title suit for specific performance of contract.

The defendant appeared and filed his written statement denying the averment made by the plaintiff. The defendant denied executing any *Mahadanama* to the plaintiff and claimed the *Mahadanama* to be forged and fabricated. During pendency of the suit, the plaintiff filed a petition under Order 39 Rule 1 and 2 of the Code of Civil Procedure (hereinafter 'the Code') seeking injunction on the suit land during the disposal of the suit. The defendant contested the claim of the plaintiff by filing showcause. However, the learned trial court passed the order dated 22.11.2016 directing the parties to maintain status quo. Aggrieved by the said order of the learned trial court granting status quo on the suit land, the petitioners filed miscellaneous appeal in the Court of learned District Judge, Madhubani. Miscellaneous Appeal No. 13 of 2016 was heard and the learned A.D.J.-1 affirmed the order passed by learned Sub judge vide the order dated 02.05.2023. Both the orders of learned trial court dated 22.11.2016 and the



order of the learned appellate court dated 02.05.2023 have been challenged in the present petition.

03. Learned counsel for the petitioners submitted that the impugned orders are not sustainable as the orders are against the settled principles of law. In a suit for specific performance of contract, no injunction can be granted unless right envisaged in the agreement is established by the parties. Both the subordinate courts failed to consider the fact that unless the agreement is enforced by the orders of the Court, the plaintiff has no right in the property. The learned subordinate courts ought to have considered that if the agreement to sale is an unregistered document then possession of the land cannot be handed over in terms of amendment in Section 53A of the Transfer of Property Act. If possession was being handed over, the document related to it was required to be compulsorily registered in terms of provisions of Section 53A of the Transfer of Property Act. The plaintiff/respondent no. 1 has made a wrong averment that he had been handed over the possession. The learned subordinate courts have further not considered the falseity of the story set up by the plaintiff that agreement was executed in the year 2001 and payment of Rs.3 lakh was received by the defendant and thereafter time of eight years was given for making payment of



Rs. 1 lakh only. Hence, a preposterous story has been set up by the plaintiff to grab the land of the defendants/petitioners. If the title has not passed to the plaintiff, injunction could not have been granted as it is a suit for specific performance of contract. In a suit for specific performance of contract, the plaintiff has the right only to get the agreement enforced and he has no vested right in the suit property. Further, the learned subordinate courts failed to take into consideration the fact that when the agreement was being denied by the defendant and unless the agreement is proved by the plaintiff, he is not entitled for any injunction. The learned subordinate courts also failed to take into consideration that if there is no prima facie case, no injunction could have been granted unless plaintiff establishes a prima facie case in his favour. Learned counsel further submitted that the plaintiff has very conveniently prepared the agreement of sale showing its execution year as 2001. Had the agreement been shown after 2002, then the agreement would have required compulsory registration. Thus, the learned counsel submitted that the learned subordinate courts failed to exercise jurisdiction vested in them by passing the impugned orders.

Learned counsel for the petitioners referred to a



decision of the learned Single Judge of this Court in the case of ***Fool Kumari Devi Vs. Krishna Deo Upadhya*** reported in ***1998(1) PLJR 262*** wherein the learned Single Judge held that while an order restraining the defendant from transferring the suit property to a third party can be passed in an appropriate case in a suit for specific performance, as falling in the second category referred to above but the defendant cannot be restrained from making repairs or construction or changing physical features of the property which was not likely to obstruct performance of the contract. The learned Single Judge further held that the agreement does not create any interest in the claim of the person until his claim is adjudicated upon and a decree is passed. Learned counsel further submitted that the learned Single Judge, after considering the triple test of prima facie case, balance of convenience and irreparable loss, observed that the necessary test in this regard is whether the grant of injunction would, if the plaintiff ultimately failed, do more injury to the defendant than its refusal would cause to the plaintiff and he ultimately be successful. Learned counsel further relied on a decision of ***Bindhyachal Prasad & Ors. Vs. Sitaram Patwa & Ors.*** reported in ***2023(1) BLJ 708*** wherein the learned Single Judge held that so far as the agreement to sale is



concerned, it does not create any right in the property. It only gives right to the proposed purchaser to bring a suit for specific performance of contract but he cannot claim any interest in the property till his suit for specific performance of contract is decreed.

04. Learned counsel appearing on behalf of the respondent no. 1 vehemently contended that the impugned orders do not suffer from any infirmity and the orders are correct and valid. The learned counsel further submitted that the original defendant handed over the possession of the suit land to the plaintiff/respondent no. 1 who continues to enjoy the possession by way of part performance and almost paid the whole consideration money and is always ready to perform his part of contract so his status is different from a person who has just entered into an agreement of sale and is not in possession of the suit property. The learned counsel for the respondent no. 1 further submitted that it is simple order of maintenance of status quo on the suit property against both the parties. The learned counsel further submitted that the local commissioner was appointed who submitted a report that he found that the disputed suit property has been amalgamated with the residential land/ premises of the respondent no. 1. The learned trial court while



passing the order for injunction also considered the fact that on the agreement to sale the revenue ticket contained the signature of the original defendant Durga Lal Rai and the said agreement to sale was dated 01.04.2001. In support of his case, learned counsel for the respondent no. 1 referred to a decision of learned Single Judge of this Court in case of ***Dr. Jagat Narayan Nayak & Anr. Vs. Karnnath Singh Thakur & Ors.*** reported in **2009(1) PLJR 822** wherein the learned Single Judge finding transfer of large sum of amount as advance of consideration money, granted injunction by restraining the parties from transferring the suit premises till disposal of the suit. Learned counsel further referred to the case of ***Kumar Bimal Prasad Singh Vs. Hare Ram Singh*** reported in **2020(2) PLJR 899** on the general proposition that unless and until a case of irreparable loss or damage is made out to a party 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 to be caused to a party who may ultimately succeed and may further lead to multiplicity of proceedings. On the same proposition the decision of learned Single Judge of this Court in the case of ***Dharam Nath Ojha & Ors. Vs. Raghunath Ojha*** reported in **2001(2) PLJR 268** wherein it has been held that law



is well settled that if a *lis* has been admitted for adjudication, then it becomes the duty of the Court to preserve the subject matter of the litigation by an appropriate order so that the same is available at the time of final adjudication and the decree does not become barren one. Thus the learned counsel for respondent no. 1 submitted that there is no infirmity in the impugned orders and the same needs to be sustained.

05. I have given my thoughtful consideration to the submission of the parties. The moot point for consideration in this matter is whether in a suit for specific performance of contract, can an order for injunction in the form of status quo restraining both the parties could be granted?

General rule is that in a suit for specific performance merely an agreement for sale would not create any right in the property for the proposed purchaser. Unless the suit for specific performance of contract is decreed no right accrues to the intended purchaser.

In the facts of the present case the respondent no. 1 based his claim on an unregistered *Mahadnama* stating that the land was transferred to him pursuant to execution of the *Mahadnama* (agreement to sale). The said contention about transfer of the land has been opposed by the petitioners who



deny the same. The respondents take shelter in the report of the learned Pleader Commissioner and claimed that the land after transfer has been amalgamated (*khilat milat*) with their land. But the situation would hardly change as the same would not create any title in favour of the respondent no. 1 and his position would remain the same as if no transfer has been made. Agreement to sale does not create any right in the subject matter of the suit property unless specific performance of contract is allowed in favour of the proposed purchaser, the claim of such person for injunction over the suit property is without any basis. Moreover, when the agreement itself is being denied by the petitioners and handing over of the property is not supported by any registered document, there would be no *prima facie* case or balance of convenience in favour of the respondent no. 1. It is settled proposition of law that an agreement to sale does not create any right in the property and only right the plaintiff gets is the right to get the agreement enforced and as such no vested right accrues to him. The plaintiff could only bring a suit for specific performance of contract.

06. Having regard to all these facts, I am of the considered opinion that the respondent no. 1 is not entitled for grant of any injunction since he has failed to make out any



prima facie case or show any balance of convenience in his favour. So far as claim of the respondent no. 1 about advancing most of the consideration amount to the father of the petitioners is concerned, the same could not be taken into account at this point of time since the whole agreement to sale is denied by the petitioners. If the petitioners succeed in establishing their claim and rights and get a decree for specific performance for enforcement of the agreement for sale then only the respondent no. 1 could claim any relief with regard to the suit property and not otherwise. For the reasons mentioned hereinbefore, the authorities cited by the learned counsel for respondent no. 1 are of no help as facts are different and the authorities more or less propound the general principles of law about preservation of suit property.

07. Since the learned Subordinate Courts failed to appreciate the facts in the light of settled principle of law, the order are not sustainable though the concurrent finding has been recorded. Hence, both the orders dated 02.05.2023 and 22.11.2016 are set aside.

08. As a result, the petition stands allowed.

09. However, it is made clear that this Court has not made any observation on the merits of the case and whatever



has been said hereinbefore are only for the purpose of disposal
of the present petition.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
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