

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.638 of 2022

1. Smt. Dipa Sarbadhikari Wife of Late Dr. Dilip Sarbadhikari, through her Duly appointed and constituted Power of Attorney, Miss. Madhuparna Sarbadhikar, being petitioner no. 3, Resident of Mohalla- Station Road, Khushkibagh, Police Station- Sadar, District- Purnea.
2. Smt. Priyanka Sarbadhikari Daughter of Late Dr. Dilip Sarbadhikari and Wife of Sri Suman Chakraborty, through her Duly appointed and constituted Power of Attorney, Miss. Madhuparna Sarbadhikar, being petitioner no. 3, Resident of Mohalla- Station Road, Khushkibagh, Police Station- Sadar, District- Purnea.
3. Miss. Madhuparna Sarbadhikari Daughter of Late Dr. Dilip Sarbadhikari, Resident of Mohalla- Station Road, Khushkibagh, Police Station- Sadar, District- Purnea.

... .. Petitioners

Versus

1. Savitri Devi Wife of Gouri Shankar Bhagat, Resident of Mohalla- Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.
2. Rajesh Bhagat Son of Gouri Shankar Bhagat, Resident of Mohalla- Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.
3. Brajesh Bhagat Son of Gouri Shankar Bhagat, Resident of Mohalla- Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.
4. Kanhiya Bhagat Son of Gouri Shankar Bhagat, Resident of Mohalla- Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.
5. Md. Guddi Daughter of Gouri Shankar Bhagat, Resident of Mohalla- Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.
6. Radhe Shyam Son of Late Sukhlal Bhagat, Resident of Mohalla- Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.
7. Shaligram Bhagat Son of Late Sukhlal Bhagat, Resident of Mohalla- Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.
8. Nand Kishore Bhagat Son of Late Ramchandra Bhagat, Resident of Mohalla- Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.
9. Anita Devi Wife of Suresh Modi and Daughter of Late Sitaram Bhagat, Resident of Mohalla- Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.
10. Sanjeeta Devi Wife of Sarvan Modi and Daughter of Late Sitaram Bhagat, Resident of Mohalla- Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.
11. Nirbhay Kumar Bhagat Son of Late Sitaram Bhagat, Resident of Mohalla- Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.
12. Amrit Chourasia Son of Late Abhay Kumar Choudaria, Resident of Mohalla- Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.



13. Sulekha Devi Wife of Late Abhay Kumar Chourasia, Resident of Mohalla-
Chandni Chowk, Purnea City, Police Station - Sadar, District- Purnea.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. J. S. Arora, Sr. Advocate
Mr. Manoj Kumar, Advocate
For the Respondent/s : Mr. Vishwajeet Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 16-02-2024

Today the matter has been listed under the heading
'For Orders (On Petitions)', but with the consent of the learned
counsel for the parties, the matter has been taken up for final
hearing and disposal.

02. The petitioners have filed the present petition
under Article 227 of the Constitution of India seeking following
relief(s):-

*i). "For setting aside the order dated
15.07.2022, passed by the Learned District
Judge, Purnea in Miscellaneous Appeal No. 2
of 2021 / CIS No. 2 of 2021, whereby he has
passed an order of injunction by setting aside
the order of the Learned Trial Court rejecting
the prayer of the plaintiffs-respondents for
grant of injunction*

*ii). Also for any other appropriate
relief(s) to which the petitioner is found to be
entitled either in the ye of law or on facts and
circumstance of the case."*



03. Shorn off unnecessary details, the case of the parties as it appears from the record can be summarized in the following manner as described hereinafter.

(i) The respondents are the plaintiffs in Title Suit No. 121 of 2018 against the original defendants who was the ancestor of the petitioners in the court of learned Sub. Judge-I, Purnea and the said title suit is now pending before the learned Sub. Judge-III, Purnea. The plaintiffs/respondents contended that the land situated at *Mauza-Alamganj, Thana No. 100/1, Tauzi No. 8/5, Ward No. 5*, Holding No. 64 and 39 was purchased by one Sukhlal Bhagat from one Sidhowati Devi and Samriwati Devi. Sukhlal Bhagat had six sons, eldest being Saryug Prasad Bhagat. The original plaintiffs claimed themselves to be the descendants of Sukhlal Bhagat. The eldest son of Sukhlal Bhagat, namely, Saryug Prasad Bhagat sold the entire land so purchased by Sukhlal Bhagat despite the fact that he was having only 1/6th share through two registered sale deeds, vide sale deed nos. 5323 and 5324 both dated 07.10.1947 to Dr. Ashutosh Basu Sarvadhikari, father of original defendant. Saryug Prasad Bhagat died issue-less. A recital was made in sale-deed that Saryug Prasad Bhagat obtained the transferred land on the basis of registered *Batwaranama* dated 13.09.1947.



The plaintiffs assailed the sale-deeds on the ground that no partition took place in the family and there was no such *Batwaranama* and it was a forged and fabricated document since all the brothers except Saryug Prasad Bhagat were minors in 1947 and their mother filed Misc. Case No. 58 of 1947 in the court of District Judge to declare herself as guardian of minor sons and she was so declared vide order dated 16.04.1948 passed by the learned District Judge, Purnea under the provisions of Guardian and Wards Act. The vendee also got his name entered into the municipal survey records. The plaintiffs further claimed that despite execution of the sale deeds, right, title, interest and possession lies in favour of the plaintiffs after deducting 1/6th share of Saryug Prasad Bhagat. With these facts, the plaintiffs sought following relief(s):-

“(a) Let it be declared and adjudicated that the plaintiff has got full right, title and interest over the suit land.

(b) That after the above relief the defendant be declared trespasser of the suit land and recovery of possession over the suit land restore to the plaintiff by directing the defendant to handover the vacant possession of the suit land to the plaintiffs failing which the possession be deliver to the plaintiffs through the process of the Court.



(c) A Decree for permanent injunction be also passed in favour of plaintiffs and defendant be directed not to interfere with the peaceful possession of the plaintiff and a temporary injunction be also passed during pendency of the suit directing the defendant not to make any construction over the suit land or alienate the same.

(d) Cost of the suit together with such other relief or reliefs to which the plaintiff may be found entitled may also be decreed in favour of the plaintiff.”

(ii) The defendants/petitioners appeared and filed written statement and contested the suit on a number of grounds and prayed for dismissal of the suit with exemplary cost. In the meantime, plaintiffs/respondents filed a petition for grant of injunction on 4th October, 2019 making prayer to restrain the defendants/petitioners from transferring the suit land during pendency of the suit. The defendants/petitioners filed rejoinder to the injunction petition and after hearing the parties, the learned court below rejected the said petition for injunction vide order dated 24.12.2020. Aggrieved by the rejection order passed by the learned trial court, the plaintiffs/respondents preferred an appeal before the court of learned District Judge, Purnea vide Misc. Appeal No. 02 of 2021. The learned District Judge,



Purnea though recorded a finding that there existed no sufficient and valid ground for issuance of order of injunction, yet it went on to pass an order that to avoid multiplicity of the proceedings and to preserve the property invoking its power under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') directed the parties to maintain status quo in the matter for transferring, alienating or creating any third party interest or any further construction on the suit land till the disposal of the suit. This part of the order has been assailed in the preset petition before this Court.

04. Learned senior counsel, Mr. J. S. Arora, appearing on behalf of the petitioners submits that both the learned court below recorded findings that there was no '*prima facie*' case in favour of the plaintiffs/respondents. Neither balance of convenience lies in their favour nor there was any question of suffering irreparable loss by the plaintiffs. Mr. Arora further submits that admittedly, the plaintiffs are not in possession of the suit property and they have sought recovery of possession over the suit land after declaration of the defendants/petitioners as trespassers. Further, the dates and sequence of events of the case make it amply clear that the suit is not maintainable. Mr. Arora further submits that in a Hindu undivided family, an



eldest male member becomes *karta* of the family and Saryug Prasad Bhagat being the eldest male member was competent to sale the property. As such the sale deeds executed by him cannot be challenged on the ground that the share of Saryug Prasad Bhagat was only 1/6th. Moreover, if such sale deeds were disputed, then the same were required to be challenged within a statutory period of three years. Even the minor member of the family could challenge the same within a period of three years after attainment of majority and not after 70 years of the execution of the sale-deed. So, deed of sale of 1947 with regard to joint family property is not liable to be challenged by filing the suit in the year 2018. Mr. Arora further submits that though the plaintiffs in their reliefs claimed declaration of their full right, title and interest over the suit land and also recovery of possession, they have not sought any declaration against the sale deeds as void and inoperative documents and did not make prayer for setting the sale-deeds aside. Mr. Arora relies on a decision of Hon'ble Supreme Court in the case of ***Prem Singh & Ors. v. Birbal & Ors.***, reported in **2006(3) PLJR 179 (SC)** [Para-20] regarding presumption of correctness about registered documents and as the plaintiffs did not challenge the registered sale deeds within prescribed time limit/limitation period, the suit



is barred and no further consequential reliefs could be granted. Even, on the face of it, the land is in possession of the defendants/petitioners since 1947, showing continuous possession of the petitioners for more than 70 years and if a suit for recovery of possession has been filed after 70 years, the same is liable to be rejected being hopelessly barred by limitation. Mr. Arora further submits that if no declaration has been sought against the sale-deed within the limitation period, no declaration for right or title in favour of the plaintiffs could be passed. Further, when recovery of possession is not possible being time barred, no other reliefs can be granted. Mr. Arora further submits that the principles of law laid down in this regard by Hon'ble Apex Court in the case(s) of ***Ravinder Kaur Grewal v. Manjit Kaur***, reported in ***(2019) 8 SCC 729: AIR 2019 SC 3827*** and ***Mohd. Yusuf v. Rajkumar***, reported in ***(2020) 10 SCC 264*** are also on the point that even a real owner having remained out of the possession of the property for more than 12 years and have not taken legal recourse to his possession, his rights to properties would extinguish. Mr. Arora further refers the decision of Hon'ble Apex Court in the case of ***Rajpal Singh v. Saroj***, reported in ***(2022) 15 SCC 260: AIR 2022 SC 2707*** on the proposition that if main relief is barred



under statutory provision, consequential reliefs also become barred.

05. Learned senior counsel, Mr. Arora, further submits that *ex facie*, the plaint itself is not maintainable and the learned first appellate court committed jurisdictional error by not appreciating the fact that once the court did not find any case for grant of injunction under Order 39 Rule 1 and 2 of the Code, any court could not have granted any injunction by taking note of Section 151 of the Code, as Section 151 of the Code has no application in the matter where there is specific provision in the Code itself. Mr. Arora further submits that the learned appellate court committed further jurisdictional error when it did not appreciate the fact that the plaintiffs only claimed injunction against alienation and not in respect of construction and still it granted such type of injunction. Even the grant of injunction about transfer or alienation was gross error committed by the learned first appellate court as the same was impermissible in view of the principle of *lis pendens*. The learned first appellate court further committed error when it went against its own finding that it did not find existence of sufficient and valid reason for issuance of order of injunction and granted the injunction by misconstruing the judgment of the Hon'ble Apex



Court in the case of *Maharwal Khewaji Trust (Registered), Faridkot Vs. Baldev Dass*, reported in *AIR 2005 SC 104*. The learned first appellate court has not appreciated the admitted position that the plaintiffs/respondents are not in possession of the suit property and the relief has been sought for recovery of possession of suit property and for this reason, the plaintiffs were not entitled to get any relief against the defendants/petitioners from using the property in the manner they like. In this regard, learned first appellate court failed to consider the admitted fact that the land in question was admittedly, sold to the father of the original defendants way back in 1947, through two registered sale deeds and the suit was filed more than 70 years thereafter, and this fact alone was sufficient to dis-entitle the plaintiffs/respondents from getting any order of injunction. Further, the father of the original defendants also got sanctioned a building plan from the Municipality way back in the year 1986 and the present suit has been filed more than 30 years thereafter. Mr. Arora further submits that the learned first appellate court went on the premises that once a suit has been filed, it has to grant injunction and did not consider the admitted position that the suit has been filed for restoration of possession and also for a



decree of permanent injunction and the plaintiffs were not entitled for any order of interim injunction. Thus, the learned senior counsel submits that on the aforesaid grounds, the order of the learned first appellate court is not sustainable and the same needs to be set aside.

06. On the other hand, learned counsel, Mr. Vishwajeet Kumar Mishra, appearing on behalf of the respondents vehemently contended that there is no infirmity in the impugned order and the same is perfectly legal. Mr. Mishra further submits that the order of the learned first appellate court is a reasoned order and has been passed directing the parties to maintain the *status quo*. The said order has been passed in order to preserve the suit property and avoid multiplicity of litigation and to adjudicate upon the rights and interests of the parties and protecting the subject matter. Mr. Mishra refers to the decision of Hon'ble Supreme Court in the case of ***Maharwal Khewaji Trust (Registered)*** (supra) to stress the fact that unless and until a case of irreparable loss or damage is made out by a party to a suit, the court should not permit the nature of property being changed which also includes the alienation or transfer of property, which may lead to loss and damage being caused to the party, who may ultimately succeed and may further lead to



multiplicity of proceedings. Mr. Mishra further submits that there is no provision prohibiting the issue of temporary injunction in the circumstances not covered by Order 39 of the Code or by any rules made under the Code. The civil courts have inherent jurisdiction to issue a temporary injunction in circumstances, which are not covered by the provisions of Order 39 of the Code, if the civil court is of the opinion that interest of justice requires the issue of such ad-interim injunction. Mr. Mishra further submits that the property of Shukhlal Bhagat had never been partitioned and, therefore, the plaintiffs/respondents have been coming in possession of the land till 01.09.2018. But all of the sudden, the petitioners forcibly dispossessed the answering respondents. The petitioners went upon alienating the suit property and for this reason, the plaintiffs/respondents filed the petition under Order 39 Rule 1 and 2 of the Code. Learned counsel further submits that Saryug Prasad Bhagat has no right to transfer the land in the name of father of the original defendant as he was not guardian and next friend of his minor brothers as their mother was the guardian appointed under the Guardian and Wards Act. For this reason, the sale-deeds executed by Saryug Prasad Bhagat are documents *void ab initio* and such documents need not be challenged. Mr. Mishra further



submits that the learned court below recorded a wrong finding that the plaintiffs have no '*prima facie*' case at all and as they were not having any *prima facie* case, no question of irreparable loss arose or balance of convenience was not in favour of the plaintiffs. Mr. Mishra further reiterated that the learned District Judge, Purnea has rightly invoked his inherent jurisdiction under Section 151 of the Code to meet the ends of justice. As Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the courts for necessary action for the ends of justice. Learned counsel further submits that the defendants/petitioners have based their claim on the sale-deeds of 1947 but even execution of such sale deeds could not take away the rights of minor co-sharers. Learned counsel further relied on a decision of this court passed in ***Civil Misc. Jurisdiction No. 380 of 2021 (Anand Prasad Sharma & Ors. Vs. Sri Nagendra Singh and Ors.)*** decided on 19.01.2024, to stress the fact that this Court intervened even when the learned trial court as well as the learned first appellate court recorded a concurrent finding refusing status quo on the suit property. Learned counsel further submits that in the present case, same situation prevails and the suit property should be protected at any cost, so as to not deny



the fruit to the plaintiffs who may ultimately succeed in the case and also to avoid the multiplicity of litigation. On the aforesaid grounds, the learned counsel submits that the impugned orders need no interference and the same needs to be affirmed.

07. Having regard to the rival submissions of the parties, the admitted facts are very much clear. There is no dispute over the sale-deeds executed in favour of the father of the original defendants in 1947. It is also evident that the petitioners are in possession. It is also admitted case of the plaintiffs that they are not in possession of the suit property and have sought relief of recovery of possession. Further, the deeds of sale are registered documents getting back to year 1947 and there is presumption of genuineness attached with such documents. The Hon'ble Supreme Court in the case of ***Prem Singh & Ors. v. Birbal & Ors.*** (supra) held that there is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. Further, '*batwaranama*' is also stated to be registered which pre-dates the sale-deed and there has been no challenge either to the *batwaranama* or to the sale-deeds. It has rightly been contended on behalf of the



petitioners that title or interest in the property cannot be established unless there is challenge to the sale deeds and they are set aside or rescinded. Even, admittedly, the municipal survey *khatiyān* is in favour of the petitioner. On consideration of all these facts, it is much clear that the petitioners are having a *prima facie* case in their favour and the same is not at all in favour of the plaintiffs/respondents.

08. Possession of the petitioners is admitted and nothing came on record to show or prove dispossession of the plaintiffs/respondents. So, any claim on this account remains a shallow claim. Obviously, balance of convenience is not in favour of the plaintiffs/respondents and rather it tilts heavily in favour of the petitioners. The *prima facie* case and balance of convenience are in favour of the defendants/petitioners and are against the plaintiffs/respondents, grant of injunction would only cause loss to the defendants/petitioners and the plaintiffs/respondents cannot claim any irreparable loss when they have neither '*prima facie* case' nor 'balance of convenience' in their favour. Moreover, any transfer or alienation at the stage of time will be hit by the principle of *lis pendens* and for this reason, there could not be any question of 'irreparable loss' to the plaintiffs/respondents.



09. It is pertinent to note here that both the learned courts below specifically recorded the findings of '*prima facie* case', 'balance of convenience' and 'irreparable loss' in favour of the defendants/petitioners, yet, the learned first appellate court exceeded its jurisdiction though apparently by relying on the decision of the Hon'ble Supreme Court in the ***Maharwal Khewaji Trust (Registered)*** (supra), exercised its power under Section 151 of the Code and directed the parties to maintain *status quo* in the matter of transferring, alienating or creating any third party interest or any further construction on the suit land till the disposal of the suit. At this stage, it must be pointed out that the said order was passed exercising jurisdiction under Section 151 of the Code and relief of temporary injunction has not been granted under Order 39 Rule 1 and 2 of the Code, however, the effect is the same. The Hon'ble Supreme Court has time and again observed that when there is specific provision in the Code itself, recourse should not be taken to the inherent powers of the court under Section 151 of the Code. The Hon'ble Supreme Court in the case of ***My Place Mutually Aided Coop. Society v. B. Mahesh***, reported in ***2022 SCC OnLine SC 1063***, held that exercise of power under Section 151 of the Code could only be in circumstances where alternate remedies do not exist. Furthermore, there has been unequivocal concurrent findings of the learned trial court



as well as learned first appellate court that the plaintiffs were neither having any '*prima facie* case' nor 'balance of convenience' in their favour. Both the learned courts below discounted the possibility of irreparable loss being caused to the plaintiffs. At the same time, the learned courts below did not doubt for a moment about '*prima facie* case' and 'balance of convenience' being in favour of the defendants. Under these circumstances, it would be unjust to restrain the defendants from enjoying their property which *ex-facie* has been in their possession for more than 70 years. Only due to the fact that the plaintiffs now challenge their title, ownership and possession in the suit property, the learned first appellate court misconstrued the observation of the Hon'ble Supreme Court in the case of ***Maharwal Khewaji Trust (Registered)*** (supra), as the said decision was taken to protect the party who may ultimately succeed and to avoid multiplicity of proceeding and for this purpose, the court were supposed not to permit the nature of property being changed. But, as observed, the defendants/petitioners are having a strong *prima facie* case. Further, the Hon'ble Supreme Court ***Maharwal Khewaji Trust (Registered)*** (supra) held that no case of irreparable loss was made out in favour of the respondents to permit them to change



the nature of the property by putting up construction and also by permitting the alienation of the property. Again, even at the cost of repetition, it could not be said that the defendants/petitioners would not suffer 'irreparable loss', if they are restrained in terms of the order of the learned first appellate court. From the facts, an extraordinary situation emerges favouring the defendants/petitioners. Hence, the proposition of ***Maharwal Khewaji Trust (Registered)*** (supra) could not be applied in the present case. Further, the said proposition could not have uniform application in all cases of injunction and the learned first appellate court missed this point.

10. The Hon'ble Supreme Court in the case of ***Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani, (2004) 8 SCC 579*** has made this point amply clear and in Para-9 of the decision held as under:-

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy



discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,”

Further, the Hon’ble Apex Court in the case of ***State of Orissa v. Sudhansu Sekhar Misra***, reported in **1967 SCC OnLine SC 17 : AIR 1968 SC 647** in Para-12 has held as under:-

“12. -----
----- *A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury L.C. said in Quinn v. Leathem [[1901] AC 495]*
;

“Now before discussing the case of Allen v. Flood, [1898] AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be



found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

It is not a profitable task to extract a sentence here and there from a judgment and to build upon it. -----

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11. So, the reliance placed by the learned first appellate court on the decision in the case of ***Maharwal Khewaji Trust (Registered) (supra)*** was simply misconceived. In the instant case, when the documents are overwhelmingly in favour of the petitioners, it would be simply unjust to injunct them from enjoying their property only on the ground that the plaintiffs/respondents have filed the suit against them and the litigation may be protracted. Further, the finding recorded by the learned first appellate court is not supported with reasons that the defendants/petitioners would not suffer any irreparable loss. On the aforesaid grounds, the finding of the learned first appellate court in Para-11 of the order dated 15.07.2022 is not



sustainable. Furthermore, it is also pertinent to mention here that there is concurrent finding of two courts about '*prima facie* case', 'balance of convenience' and 'irreparable loss' in favour of the defendants/petitioners. This Court, as discussed hereinabove, has not found anything to take a contrary view on the aforesaid aspects of the matter. In a *catena* of decisions, the Hon'ble Supreme Court has held that this Court should be circumspect in interfering with the concurrent finding of the learned courts below. One such decision by the Hon'ble Supreme Court is of the case of ***Prakash Harishchandra Muranjan Vs. Mumbai Metropolitan Region Development Authority and Another***, reported in (2009) 3 SCC 432. In this case Hon'ble Supreme Court declined to interfere when prayer for injunction was concurrently refused by two courts and held that it could take a different view only if the judgment of the courts below was found to be perverse.

12. In the light of aforesaid facts and circumstances and discussion made here-in-above, I do not find the portion of order of the learned first appellate court to the extent that it has held "*Going by the ratio of the above mentioned decision, it is clear that none of the parties have been able to properly satisfy this court that the loss incurred by the parties shall be*



irreparable loss, hence in order to avoid multiplicity of proceedings and to preserve the property, this court invoking power under section 151 of CPC, find it fit to direct the parties to maintain status quo in the matter of transferring, alienating or creating any third party interest or any further construction on the suit land till the disposal of the suit” could be upheld, and hence the said portion of the order is set aside and the impugned order dated 15.07.2022 passed in Misc. Appeal No. 02 of 2021/CIS No. 2 of 2021 stands modified to the aforesaid extent.

13. In the result, the present petition stands allowed.

14. However, discussion made here-in-above is only for the purpose of disposal of the present case and the same is not a comment on the merits of the case and the learned trial court would take up the matter for expeditious disposal uninfluenced by any of the observations made herein.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23.02.2024
Transmission Date	N/A

