

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.994 of 2018

Altamish @ Monu S/o Md. Zamir, Resident of Elamram Chaukganj No - 2,
P.O./P.S. - Bettiah, District - West Champaran.

... .. Petitioner/s

Versus

- 1.1. Md. Tarique (Son) S/o Late Aasiya Khatoon, Permanent address at illam ram chowk, ganj no.2, Bettiah, West Champaran - 845438.
- 1.2. Aamir Arafat (Son), S/o Late Aasiya Khatoon, Permanent address at illam ram chowk, ganj no.2, Bettiah, West Champaran - 845438.
- 1.3. Yasmin Parween (daughter), D/o Late Aasiya Khatoon, Permanent address at illam ram chowk, ganj no.2, Bettiah, West Champaran - 845438.
- 1.4. Rumana Khatoon (daughter) D/o Late Aasiya Khatoon, Permanent address at illam ram chowk, ganj no.2, Bettiah, West Champaran - 845438.
- 1.5. Shabana Khatoon (daughter), D/O Late Aasiya Khatoon, Permanent address at illam ram chowk, ganj no.2, Bettiah, West Champaran - 845438.
2. Md. Zamir, S/o Late Md. Mansoor Resident of Muhalla - Ganj No - 2, Bettiah, Ellamram Chauk, P.O. and P.S. - Bettiah Nagar, District - West Champaran.
3. Manisha D/o Late Md. Mansoor, Resident of Muhalla - Ganj No - 2, Bettiah, Ellamram Chauk, P.O. and P.S. - Bettiah Nagar, District - West Champaran.
4. Samima Khatoon, W/o - Md. Aurangzeb Khan, Resident of Muhalla - Ganj No - 2, Bettiah, Ellamram Chauk, P.O. and P.S. - Bettiah Nagar, District - West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. H. P. Singh, Sr. Advocate Mr. Rakesh Chandra, Advocate
For the Respondent/s	:	Md. Abu Haidar, Advocate Md. Abu Shajar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 11-01-2024

The petitioner has filed the instant petition for quashing the order dated 05.01.2018, passed in Title Suit No. 381 of 2013 by which the learned Sub-Judge-III, Bettiah, West Champaran has rejected the petition filed by the



defendant/petitioner under Section 151 of the Code of Civil Procedure (hereinafter 'CPC') for restoration of possession over the suit land, as the petitioner/defendants was forcibly dispossessed by plaintiff/respondent no. 1.

02. Briefly stated the case of the petitioner is that the original plaintiff/respondent no. 1 filed Title Suit No. 381 of 2013 for declaration of her title on the basis of sale deed over the schedule-1 of the plaint and also for order of ejectment of defendants-1st set. Petitioner is defendant no. 2 and his father was defendant no. 1, both contesting defendants-1st set. The plaintiff claimed that suit land is the ancestral and purchased land and defendants-1st set has encroached upon some portion of the purchased land of the plaintiff. The land was purchased in the year 2012 by the plaintiff/respondent no. 1. The defendants 1st set appeared and submitted that the suit land is ancestral land of the parties and was amicably partitioned on 15.03.1996, a memorandum of partition was also prepared, which was duly signed by the parties and *jamabandi no.* 1985 was created in their names for an area of 14 *dhurs*. Out of the said land of 14 *dhurs*, defendant no. 1 sold 03 *dhurs* and 12 *dhurki* to one S. Baburao and remaining 10 *dhurs* and 08 *dhurki* land remained in possession of the defendant/petitioner and his house is



standing there and Municipal holding was also created. Defendant no. 4 filed his separate written statement supporting the case of the plaintiff/respondent no. 1. Thereafter, on 06.06.2017, the defendant/petitioner filed a petition under Section 151 of the CPC mentioning that on 14.04.2017, the plaintiff broke the lock of his house and forcibly dispossessed this defendant who was residing at Delhi for the purpose of treatment of his father, although the possession of the defendants-1st set was admitted as relief for ejectment of defendants-1st set has been sought in the plaint. Admittedly, defendant was in peaceful possession and without any lawful order, the plaintiff and her sons dispossessed him and took forcible possession and for the said purpose Bettiah P.S. Case No. 279 of 2017 was instituted and charge-sheet has been submitted against the plaintiff/respondent no. 1. This application was opposed by the plaintiff/respondent no. 1, who filed her rejoinder on 24.07.2017 trying to justify the action of dispossession on the ground that the allegation petition was not verified and supported by affidavit and also on the ground that the petition was beyond the ambit of CPC. The plaintiffs/respondents further claimed that the police case was false. The learned court below rejected the prayer made by the



defendant/petitioner vide impugned order dated 05.01.2018 on the ground that the defendant has not filed any counter claim in his written statement and also that the petition under Section 151 of CPC was not maintainable, if there is specific provision in the CPC. The learned trial court further held that the facts placed by the defendant/petitioner cannot be adjudicated without taking evidence.

03. Learned counsel appearing on behalf of the petitioner submitted that the learned trial court has miserably failed to consider that no person can be deprived of his property except through the process of the Court and in the instant case, when it was the admitted case of the plaintiff that the defendant was in possession and if the defendant/petitioner has been dispossessed, the learned court below was duty bound to restore his possession. Learned counsel further submitted that the learned trial court has held that as the defendant has not filed any counter claim but admittedly, the plaintiff and the defendants have their residential houses over the suit property. As per the case of plaintiff/respondent no. 1, the defendant has encroached upon certain portion of his purchased land and the same has been denied by the defendant. So, the issue is yet to be decided by the learned court below and the parties have to stand



on their own legs. But ignoring the said fact, the petition has been rejected. The learned trial court further committed an error when it held that petition under Section 151 of CPC is not maintainable, as there is specific provision in the CPC, but CPC is silent on this point and in such type of situation only a prayer for mandatory injunction can be made and hence prayer for restoration of possession has been rightly made under Section 151 of C.P.C. Learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in the case of ***Sushil Kumar Dey Biswas & Anr vs Anil Kumar Dey Biswas & Anr*** (Civil Appeal No. 10689 of 2014), reported in (2015) 3 SCC 461, submitting that the facts of the present case are similar to the case before the Hon'ble Supreme Court, wherein the respondent/plaintiff dispossessed the appellant/defendant from premises. Though it was admitted that the defendant was having possession of certain portion of the suit property and the application under Section 151 of the CPC was filed for restoration of possession, which was rejected by the learned appellate court as well as High Court. But the Hon'ble Supreme Court allowed the appeal and directed the respondent/plaintiff to restore the possession of the appellant/defendant. Learned counsel also relied on the decision of Hon'ble Supreme Court in



the case of *Meera Chauhan v. Harsh Bishnoi*, reported in *(2007) 12 SCC 201 : 2006 SCC OnLine SC 1399 at page 204*, submitting that the facts of this case were also similar to the facts of the present case and the Hon'ble Supreme Court held that an application under Section 151 CPC can be entertained in the given facts of the case and the power under Section 151 to pass order of injunction in the form of restoration of possession is no more *res integra*. Thus, learned counsel submitted that the order of the learned trial court is not in accordance with law and has been passed in a mechanical manner. Hence, the impugned order be quashed.

04. On the other hand, learned counsel for the respondent first party, vehemently opposed the contention of the learned counsel for the petitioner. Learned counsel for the respondent no. 1 submits that the learned court below has rightly rejected the application under Section 151 of the CPC as not maintainable. The defendant has tried to make out a case on wrong facts and due to previous enmity. Because in earlier round of litigation, the learned Sub. Judge-III, Bettiah, West Champaran in Title Suit No. 222 of 2010 filed by the father of the petitioner against original respondent no. 1, has dismissed the suit with cost vide decree dated 10.06.2015. Further, police



did not submit charge-sheet against original respondent no. 1 and exonerated her from all charges though against her sons charge-sheet has been submitted under Section 448 of the IPC on 17.05.2017. Learned counsel relied on a decision of the Hon'ble Apex Court in the case of *My Palace Mutually Aided Co-operative Society Vs. B. Mahesh and Ors, (Civil Appeal No. 5784 of 2022)* decided on 23.08.2022, reported in **2022 SCC OnLine SC 1063** on the point that Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under this Code. It is crystal clear from the decisions of the Hon'ble Supreme Court that the application under Section 151 of C.P.C. filed by the petitioner before the court below was not maintainable as alternative remedy under Section 6 of the Specific Relief Act is available to the petitioner and Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. Therefore, the learned court below rightly came to the conclusion that the application under Section 151 C.P.C. is not maintainable. The impugned order does not need any interference and the same needs to be sustained in view of the settled



propositions of law. Learned counsel further submitted that the decision relied by the petitioner in the case of ***Sushil Kumar Dey Biswas*** (supra) is not applicable in the present case since the said order was passed in an eviction case.

05. I have given my thoughtful consideration to different aspects of the matter. The authority cited by the plaintiffs/respondents in the case of ***My Palace Mutually Aided Co-operative Society Vs. B. Mahesh and Ors.*** (supra) is pronouncement of general principles governing application of Section 151 of the CPC. Now, when it is the admitted case of the plaintiffs/respondents that the defendant/petitioner was in the possession of the suit property and there is further admission about the dispossession of the defendant, equity demands that the defendant is not forced to further litigate in the matter and the defendant should be put into possession of the area from which he has been dispossessed. It is immaterial that the petition seeking repossession has been filed under Section 151 of the CPC and the Hon'ble Supreme Court in the case of ***Meera Chauhan*** (supra) has held that the issue is not *res integra* anymore. Paragraph nos. 15, 16 and 17 are reproduced for reference:-

“15. On a bare perusal of Section 151 of the Code of Civil Procedure, it cannot be said to



be in dispute that Section 151 confers wide powers on the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

16. The power of Section 151 to pass order of injunction in the form of restoration of possession of the code is not res integra now.

17. In Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal [AIR 1962 SC 527 : 1963 All LJ 169] while dealing with the power of the court to pass orders for the ends of justice or to prevent the abuse of the process of the court, this Court held that the courts have inherent jurisdiction to issue temporary order of injunction in the circumstances which are not covered under the provisions of Order 39 of the Code of Civil Procedure. However, it was held by this Court in the aforesaid decision that the inherent power under Section 151 of the Code of Civil Procedure must be exercised only in exceptional circumstances for which the Code lays down no procedure.”

06. Moreover, the plaintiffs cannot take advantage of their own wrong and the defendant could not be relegated to seek remedy under Section 6 of the Specific Reliefs Act, 1963. Admittedly, the suit has been filed seeking ejectment of the defendant from the portion of suit property described in schedule-1 of the plaint. So whatever is the admitted position in



the plaint about the possession of the defendant and whether the defendant/petitioner has been dispossessed either in the whole or in part of his premises, the plaintiffs are bound to restitute him in the said area. It hardly matters that this is not a suit for eviction claiming landlord and tenant relationship. Facts of the case of the petitioner is quite similar to the decision cited on behalf of petitioner/defendant in the case of ***Sushil Kumar Dey Biswas*** (supra).

07. In view of the aforesaid discussions, I am of the considered opinion that the defendant/petitioner is entitled for restoration of his possession on the admitted portion of the suit property and the learned court below committed an error when it rejected the prayer for restoration of possession filed on behalf of the defendant/petitioner and did not exercise the jurisdiction vested in it.

08. In the result, the impugned order of the learned trial court dated 05.01.2018, passed in Title Suit No. 381 of 2013 by the learned Sub-Judge-III, Bettiah, West Champaran is set aside and the instant Civil Misc. petition is allowed.

09. The plaintiffs/respondents are directed to restore the possession of the defendant/petitioner in the admitted portion of the suit property from which he has been



dispossessed within three weeks from the date of receipt/production of a copy of this order. If the order is not complied within the stipulated period, the defendant/petitioner is at liberty to move before the learned trial court seeking enforcement of the order of this Court.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	19-12-2023
Uploading Date	11-01-2024
Transmission Date	N/A

