IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1714 of 2017

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1. Anita Devi, Wife of Narayan Singh
2. Pintu Kumar Singh, Son of Narayan Singh
   Both residents of Village - Mahdatpur, Police Station Naugachia, District Bhagalpur.

... ... Petitioner/s

Versus

1. Awadhesh Gupta, Son of Chamu Lal Gupta
2. Usha Bharti Wife of Awadhesh Gupta Both residents of Village - Ma Bishahari Mandir Road, Naugachia Bazar Police Station Naugachia, District Bhagalpur.
3. Ajay Kumar Yadav Son of Krishnadeo Yadav @Arun Kumar Yadav Resident of Shri Krishna Chitra Mandir, Naugachia Police Station Naugachia, District Bhagalpur.
4. Pappu Kumar Son of Shankar Mandal Resident of Village Nurudinpur, Police Station Bihpur, District Bhagalpur.
5. Raman Kumar Singh Son of Kishun Prasad Singh Resident of Village - Dharahara, Police Station Gopalpur, District Bhagalpur.
6. Manoj Pansari Son of Late Motilal Pansari Resident of Village - Naugachia, P.O. - Naugachia, District - Bhagalpur.
7. Ashok Kumar Singh Son of Late Sandeep Prasad Singh Resident of Village - Balaha, Police Station - Bihpur Bhawanipur, District Bhagalpur.
8. Narayan Singh Son of Late Ram Singh Resident of Village Mahadatpur, Police Station Naugachia, District Bhagalpur.
9. The Regional Manager, Hindustan Petroleum Corporation Limited, Dakbunglow Chowk, Patna.
10. Lalan Thakur Son of Madan Mohan Thakur Resident of Mohalla - Bhikhanpur, Police Station Ishakchak, District Bhagalpur.
11. Janmaijai Singh Son of Late Mandan Singh Resident of Mohalla - Siyaram Nagar, Bhikhanpur, Police Station Ishakchak, District Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Brajesh Kumar Singh, Advocate
For the Respondents 1-7	:	Mr. Walliur Rahman, Advocate
		Mr. Rajesh Kumar, Advocate
For the respondent 9	:	Mr. Rajeev Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 30-09-2024

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

10.08.2017 passed by the learned 1st Additional District Judge, Naugachia in Misc. Appeal No.11/2017 whereby and whereunder the learned appellate court vacated the order dated 20.05.2017 of *status quo* passed by the learned Sub Judge-III, Naugachia in Title Suit No. 37/2013.

2. The conspectus of the case, as it emerges from the records, is that the petitioners are the plaintiffs before the learned trial court and the respondents are defendants. The petitioners filed Title Suit No. 37/2013 for declaration of their share over the suit land, detailed in Schedule D of the plaint, measuring 87 decimals of land of Khesra No. 2203 (Part), Khata No. 486 and also for declaration that the sale deed from defendant no.9/respondent no.8 dated 10.07.2012 is forged, fictitious and fabricated, not acted upon and not binding upon the plaintiffs/petitioners and also for declaration that the sale deed dated 07.12.2012 is not binding besides some other relief. The plaintiffs/petitioners claimed to have purchased 91 decimals of suit land under registered sale deed dated 20.03.1986. Subsequently the defendant no.9 purchased part of the suit land measuring 43.5 decimals vide another sale deed dated 23.03.1986. The plaintiffs/petitioners executed a power of attorney in favour of defendant no.9 in the year 2004 and, accordingly, a portion of the suit land was granted on lease to

Hindustan Petroleum Corporation Ltd. for 40 years for running a petrol pump, which is represented by defendant no.11/respondent no.9. A portion of the suit land was also granted on lease to a dairy farm on monthly rental in the building constructed by the plaintiffs/petitioners.

3. Further case of the plaintiffs/petitioners is that the defendant nos. 1 & 2/respondent nos. 10 & 11 informed them that they have got a registered sale deed in their favour executed by defendant no.9 and showed the plaintiffs/petitioners a copy of the sale deed dated 07.12.2012 and gave threats to the plaintiffs/petitioners to dispossess them from their land. The plaintiffs/petitioners immediately filed a petition before the SDM, Naugachia to protect their right and, accordingly, a proceeding under Section 144 of the Code of Criminal Procedure was initiated. On the basis of sale deed dated 10.07.2012, the defendant nos.1 and 2 executed another sale deed dated 07.12.2012 in favour of defendant nos. 3 & 4, who are respondent nos. 1 & 2 in the present case. The defendant nos. 1 & 2 executed another sale deed dated 11.12.2012 in favour of defendant nos. 5 to 8, who are respondent nos. 4 to 7 in the present case and, during the pendency of the Title Suit No. 37/2013, the respondent nos. 4 to 7 executed further sale deeds dated 27.03.2015 and 09.06.2015 in favour of respondent

no.3. Thus, within two months, the suit land had been sold through registered documents in favour of several persons. The plaintiffs/petitioners claimed that price of the land runs into crores but it was sold for meagre amount which shows sham nature of transaction.

4. The defendants appeared and filed their written statement contesting the claim of the plaintiffs/petitioners and stated that they have purchased the land from defendant no.9 and since their purchase, they have been coming into possession of the land and denied the existence of petrol pump, Sudha Dairy farm, structure for transport business etc.

5. The defendant no.9 also filed the written statement supporting the case of the plaintiffs/petitioners and denying the existence of sale deeds and claiming the document to be fictitious and sham.

6. During pendency of the title suit, the plaintiffs/petitioners filed a petition for injunction claiming that the contesting defendants were trying to dispossess the petitioners/plaintiffs from the suit property over which the house of the plaintiffs with petrol pump, dairy farm, transport business etc. existed. The defendants filed their show cause praying for rejection of the injunction petition. The learned Sub Judge, Naugachia ordered for a report from the Survey Knowing

Pleader Commissioner in view of the fact that the structure/construction was being denied by the defendants. After hearing the parties, the learned Sub Judge, Naugachia passed ad-interim order for maintaining *status quo* with regard to the suit land on 12.08.2015. The Survey Knowing Pleader Commissioner submitted its report on 15.03.2016 supporting the claim of the plaintiffs/petitioners about the existence of structure/ business/petrol pump. The defendant-Hindustan Petroleum Corporation Limited also filed its show cause supporting the claim of the plaintiffs/petitioners. The learned trial court heard the matter of injunction, confirmed the *ad interim* order dated 12.08.2015 vide its order dated 20.05.2017 and ordered for maintaining *status quo* till the disposal of the suit. The defendants/respondents preferred Misc. Appeal No. 11/2017 and the learned 1st Additional District Judge, Naugachia held that the order of *status quo* passed by the learned trial court was not sustainable and vacated the same by allowing the appeal vide order dated 10.08.2017.

7. The learned counsel for the plaintiffs/petitioners submitted that the impugned order of the learned appellate court is not sustainable in the eyes of law as the same does not take into consideration the reasoning adopted by the learned trial court on the point of *prima facie* case, balance of convenience

and irreparable loss being in favour of the plaintiffs/petitioners. The learned appellate court proceeded in the matter on the basis of wrong appreciation of facts and wrongly held that no relief was prayed for by the plaintiffs for temporary/permanent injunction nor court fee for the same was paid. It is an error of record as, for the purpose of injunction, valuation of court fee was fixed at Rs.500/-. The learned appellate court also failed to notice the fact that *ad interim* injunction was granted on 12.08.2015 and which continued till the orders passed by the learned appellate court which protected the plaintiffs from irreparable loss and hence, the observation made by the learned appellate court about no irreparable loss considering filing of the instant appeal in the year 2013 and its disposal in the year 2017, is also an erroneous recording of facts. The learned counsel further submitted that the learned appellate court further committed an error when it did not take into account the fact that all the sale deeds were executed within a period of two months and the same shows fictitious and sham transaction and cannot be presumed to support the claim of possession of the defendants/respondent nos. 1 to 3. Without any cogent evidence for holding that *prima facie* case was made out in favour of the defendants, the learned appellate court proceeded on the basis of assumption. The learned counsel further submitted that the learned appellate court also failed to take notice of the fact that the registered lease deed in favour of Hindustan Petroleum Corporation Limited and Sudha Dairy Farm have been in existence since 2004 and it is a pointer to the possession of the plaintiffs/petitioners. Obviously, the lease deed was executed much earlier than execution of sale deeds of the defendants and the learned appellate court's view, ignoring this fact and holding that lease given to any other person without authority will not create any right, is completely misconceived appreciation of facts.

8. The learned counsel for the plaintiffs/petitioners further submitted that the land described in Schedule A of the plaint bearing New Plot No. 2203 of Khata No. 486 was recorded in the name of Tarni Prasad Das, the father of late Shiv Narayan Das and Har Narayan Das having total area of 3 acres and 45 decimals. The land was divided equally by oral amicable partition between two branches of Tarni Pd. Das. Shiv Narayan Das was allocated the Schedule B land who sold his entire share to the plaintiffs and defendant 4th party, i.e, defendant no.9 and his brother Anup Dev Singh and the said area has been described in Schedule C of the plaint. The plaintiff no.1 purchased 47 ½ decimals of land of Plot No. 2203 through sale deed no.3498 dated 20.03.1986. The husband of the plaintiff no.1/defendant no.9 purchased 43 ½ decimals of land of Plot

No.2203 through registered sale deed no.3499 dated 20.03.1986. The defendant no.9 also purchased 13 decimals of land through sale deed no.3644 dated 24.03.1986. The plaintiff no.2 purchased 43 ½ decimals of land of Plot No.2203 through sale deed no.3500 dated 20.03.1986. The learned counsel further submitted that the plaintiffs and the defendant 4th party also own and possess their ancestral land of Plot No. 2204 which was amicably partitioned amongst the brothers of defendant no.9 Narayan Singh. The said land of share of plaintiffs and defendant no.9 is in the south of Plot No. 2203. The defendants/respondent nos. 1 to 3 managed to procure some fictitious deed only to grab the valuable properties of the plaintiffs. The learned counsel further submitted that the plaintiff and defendant no. 9 purchased 1 acre 30 ½ decimals of land from R.S. Plot No.2203 on 20.03.1986 from Shiv Narayan Das.

9. The learned counsel for the plaintiffs/petitioners further submitted that in the year 2004, the plaintiffs gave a power of attorney in favour of defendant no. 9 to let out their land to Hindustan Petroleum on lease and other persons. In this manner, lease was executed for the part of the suit land belonging to the plaintiffs to Hindustan Petroleum for running a petrol pump for 40 years. This power of attorney was

subsequently revoked. The presence of the sale deeds in favour of the plaintiffs, execution of power of attorney in favour of defendant no.9 and existence of petrol pump, dairy farm, structure for transport business, clearly establish *prima facie* case and balance of convenience in favour of the plaintiffs/petitioners. The execution of sale deeds all within two months point towards the danger to the property of the plaintiffs/petitioners.

10. The learned counsel for the plaintiffs/petitioners further submitted that if the *status quo* is not granted, the suit land may further be alienated by the defendants causing unnecessarily complication and considering the fact that the property has been given on lease for 40 years to Hindustan Petroleum and two other entities, irreparable loss would be caused to the plaintiffs/petitioners. However, these facts were not considered by the learned appellate court.

11. The learned counsel for the plaintiffs/petitioners further submitted that the learned appellate court completely ignored the report of Survey Knowing Pleader Commissioner, which took into consideration total area of suit property and the area of different entities existing on the suit property. The learned counsel further submitted that while passing the impugned order, the learned appellate court has virtually

declared the title of the defendants without trial. The learned counsel further submitted that the learned trial court has taken note of the fact that defendant no.9 sold all of his share of land of Plot No. 2203 till the year 2001 and no land of Plot No. 2203 remained with defendant no.9, no question arose for transfer of land through lease of defendant no.9 from Plot No. 2203. This also goes on to show that the portion of land of Plot No. 2203, which has been leased out, is the land of the plaintiffs/petitioners, which was given to defendant no.9 on the basis of power of attorney. Thus, learned counsel submitted that the impugned order is not sustainable and the same be set aside.

12. On the other hand, learned counsel appearing on behalf of the respondent nos. 1 to 7 vehemently opposed the contention of the learned counsel for the petitioners. The learned counsel for the respondent nos. 1 to 7 submitted that suit as framed itself is not maintainable as the same is barred under the provisions of Section 34 of the Specific Relief Act. The plaintiffs claimed encroachment over their land, but no relief of recovery of possession has been sought for. If the encroachment is existing since the very beginning, the same should have been incorporated in the plaint itself. If the encroachment is a subsequent event, no amendment has been sought for. The learned counsel further submitted that the whole case of the

plaintiffs is based on power of attorney executed in favour of defendant no.9, who is vendor of the respondents. But the said power of attorney was executed in favour of defendant no.9 for sale of land and not for the purposes of letting the land on lease. Pursuant to the execution of the said power of attorney, defendant no. 1 sold the land from Khata No. 486, Khesra No. 2203, Area 87 decimals to defendant nos. 1 & 2 by registered sale deeds. The possession was handed over to the purchasers. Therefore, the learned appellate court rightly took notice of this fact that no power of attorney with power to lease the property has been executed in favour of defendant no.9 and hence, if any lease was created by defendant no.9, the same was without any authority. The learned counsel further submitted that the respondents have made their claim on the basis of registered sale deeds executed by the defendant no.9 and raised a triable issue. So, *prima facie* case lies in favour of the appellants. If the property did not remain with the plaintiffs, there is no question of plaintiffs suffering irreparable loss or having balance of convenience in their favour.

13. The learned counsel appearing on behalf of respondent no.9, Hindustan Petroleum Corporation Limited, however, supported the contention of learned counsel appearing on behalf of the plaintiffs/petitioners and submitted that in the

report of Survey Knowing Pleader Commissioner, it has come on record that total area of the petrol pump of the respondent no.9 is 55.425 decimals and the same has also been mentioned in the lease deed of Hindustan Petroleum Corporation Limited. If defendant no.9 properly executed any documents of sale, the respondent no.9 was required to be given a notice. The learned counsel also submitted that vide the impugned order, the learned appellate court has decided the issue involved in the suit and, therefore, the impugned order is bad in the eyes of law. The learned counsel further submitted that if the *status quo* is not granted, the Hindustan Petroleum Corporation Limited, a public sector entity would be sufferer since the public money has been invested in operating the petrol pump and a proper lease deed was executed. Both these factors are supportive of contention of the petitioners about balance of convenience and irreparable loss being in their favour. The claim of the contesting defendants, about power of attorney being executed for sale of the land and not for leasing the property, is not sustainable in the light of stand taken by the plaintiffs, the principals of the power of attorney holder. The learned counsel further submitted that having regard to the admitted sale deeds in favour of the plaintiffs and sale of his share by defendant no. 9 prior to execution of sale deed and having no share of his land in the suit property shows *prima facie* case in favour of the plaintiffs. Thus, in the aforesaid grounds, the order of the learned appellate court is not sustainable.

14. I have given my thoughtful consideration to the rival submission of the parties as well as to the facts available on record.

15. The claim of the plaintiffs is based on their sale deed which is even admitted by the contesting defendants/respondents. The issue before the learned trial court is whether the sale deeds executed by the defendant no.9 in favour of defendants/respondent nos. 1 to 7, 10 & 11 on the basis of power of attorney given in his favour by the plaintiffs are valid documents and create right, title and interest of the contesting defendants/respondents in the suit property.

16. Admittedly, the plaintiffs and defendant no.9 purchased the suit property from Shiv Narayan Das. Now the plaintiffs claim the power of attorney was given to defendant no.9 for execution of sale deed in favour of Hindustan Petroleum Corporation Limited and a lease deed was duly executed in favour of the lessee Hindustan Petroleum Corporation Limited in the year 2004 as it appears from the report of Survey Knowing Pleader Commissioner and the submission made on behalf of the respondent no.9, which is a

public sector entity. It is also claimed by the plaintiffs that subsequently the power of attorney was revoked. These contentious issue are the subject matter of trial and would be decided in due course of trial. For consideration of grant of injunction or refusal, the same could be considered on the touchstone of the *prima facie* case, balance of convenience and irreparable loss. If the plaintiffs satisfy the triple tests, they would be entitled to grant of injunction. When the plaintiffs filed their suit challenging the execution of sale deeds in favour of defendants/respondents by defendant no.9 and raised a triable issue, *prima facie* case could be in favour of the plaintiffs. Further considering the execution of lease in favour of Hindustan Petroleum Corporation Limited and Sudha Dairy Farm and also having these entities on the land of Plot No. 2203 as it appears from the report of Survey Knowing Pleader Commissioner, allowing the defendants to interfere with the existing arrangement would tilt the balance of convenience and, therefore, I am of the view that the balance of convenience lies in favour of the plaintiffs and it is not in favour of the defendants. If the *status quo* is not granted, it is the plaintiffs who would suffer much more than the defendants if the *status quo* is granted. Moreover, the view of the learned appellate court is not supported with sound reasoning. The learned appellate court recorded its findings on the basis of the existence of power of attorney authorizing the defendant no.9 for sale of the land, but did not consider the claim of its revocation. The learned appellate court also overlooked the existence of lease in favour of respondent no.9, Hindustan Petroleum Corporation Limited and rather went to the extent of declaring this lease to be invalid holding that lessor was not having any authority. But already observed these are triable issues and could not be cursorily decided in this manner. It has also been pointed out that the order of learned appellate court suffers from error of record as it held that no relief has been prayed for temporary or permanent injunction nor any court fee for injunction has been paid and, for this reason, the petition for temporary injunction was not maintainable. However, it has been pointed out on behalf of the plaintiffs that the prayer for injunction was made and correspondingly court fee of Rs. 500/- was paid for injunction. The learned appellate court also ignored the fact that the injunction has been operating in the matter since 12.08.2015 till 10.08.2017 when the order of the learned appellate court was passed. The learned first appellate court proceeded on the premises that from the year 2013 to 2017 as nothing happened and there was no possibility of irreparable loss to the plaintiffs if the injunction was not granted.

17. The Hon'ble Supreme Court in the case of ***Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass,*** 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 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.

18. Further, this Court in the case of ***Anand Prasad Sharma & Anr. Vs. Sri Nagendra Singh & Ors.,*** reported in ***2024 SCC OnLine Pat 218,*** has held that balance of convenience would lie in favour of person who wants to preserve 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.

19. On the similar aspect of the matter, the different Coordinate 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*** have held that injunction should be granted to

protect the property.

20. Having regard to these facts and circumstances of the case and in the light of discussion made here-in-before, I am of the considered opinion that the impugned order dated 10.08.2017 passed by the learned appellate court could not be sustained and, hence, the same is set aside and order dated 20.05.2017 of the learned trial court granting *status quo* is confirmed. Since it is a suit of 2013, the learned trial court is directed to dispose of the suit at the earliest and preferably within one year of receipt/production of a copy of this order.

21. However, this Court has not expressed any opinion on merits of the case and the learned trial court would proceed in the matter uninfluenced by any of the observations made for disposal of the present petition.

22. With the aforesaid observations/directions, the instant petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	05.09.2024
Uploading Date	01.10.2024
Transmission Date	NA