

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1469 of 2023

In
Miscellaneous Jurisdiction Case No.1960 of 2023

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1. Sabiha Khanam Wife of Late Md. Allam Ahmed Khan Resident of Mohalla-Benta, Ward No.- 43, P.S.- Laheriasarai, District- Darbhanga.
 2. Aamir Aziz Alam Khan, Son of Late Allam Ahmed Khan Resident of Mohalla- Benta, Ward No.- 43, P.S.- Laheriasarai, District- Darbhanga.
 3. Shah Sujah Aziz Alam Khan @ Shah Shujah Aziz Alam Khan, Son of Late Allam Ahmed Khan Resident of Mohalla- Benta, Ward No.- 43, P.S.- Laheriasarai, District- Darbhanga.

... .. Appellants/Respondents

Versus

1. Mahtab Aziz Alam Khan Son of Late Md. Noman Ahmed Khan, Resident of Mohalla- Shahganj Benta, P.S.- Laheriasarai, District Darbhanga Presently Residing at Flat No. 2021, A1 Reem Plaza Mafaz-1, Buhaira Carniche Sharjah UAE through the Special Power of Attorney executed in favour of Md. Ali Kha, Male, aged about 49 years, Son of Late Md. Noman Ahmed Khan, Resident of Mohalla- Shahganj Benta, P.S. Laheriasarai, District-Darbhangha.

....Opposite Parties 1st set/Petitioner

2. Sri Brijesh Mehrotra, the Principal Secretary, Revenue and Land Reforms, Government of Bihar, Patna.
3. Sri Rajiv Raushan, the District Magistrate, Darbhanga.
4. Sri Chadrima Atri, the Sub-Divisional, Darbhanga.
5. Sri Anshu Prashu, the Circle Officer, Bahadurpur, Darbhanga.
6. Sri Awkash Kumar, the Senior Superintendent of Police, Darbhanga.
7. Sri Kirti Kumar, the Station House Officer, Laheriasarai, Darbhanga.
8. Sri Gaurav Kumar, the Municipal Commissioner, Darbhanga.
9. Sri Gaurav Kumar, the Chief Executive Officer, Municipal Corporation, Darbhanga.

....Opposite Parties 2nd set/Respondents

10. Mukhtar Ahmed Khan, Son of Asfaq Ahmed Khan Resident of Mohalla-Benta, P.S.- Laheriasarai, District- Darbhanga.
11. Sabbir Ahmed Khan, Son of Asfaq Ahmed Khan Resident of Mohalla-Benta, P.S.- Laheriasarai, District- Darbhanga.
12. Abrar Ahmed Khan, Son of Asfaq Ahmed Khan Resident of Mohalla-Benta, P.S.- Laheriasarai, District- Darbhanga.

... .. Opposite parties 3rd set/ Respondents

with



Civil Writ Jurisdiction Case No. 17164 of 2022

Mahtab Aziz Alam Khan Son of Late Md. Noman Ahmad Khan, R/o Moha-Shahganj Benta, P.S. Laheriasarai, Distt. Darbhanga, presently residing at Flat No. 2021, Al Reem Plaza Mafaz-1, Buhaira Carniche executed UAE, through the Special Power of Attorney executed in favour of Mohammad Ali Khan, Male, aged about 49 years, son of Late Mohammad Noman Ahmad Khan, resident of Mohalla-Shahganj Benta, Ward No. 35, Police Station-Benta O.P. Laheraisarai, District-Darbhangha.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms, Government of Bihar, Patna.
2. The District Magistrate, Darbhanga.
3. The Sub-Divisional Officer, Darbhanga.
4. The Circle Officer, Darbhanga.
5. The Senior Superintendent of Police, Darbhanga.
6. S.H.O. (Station House Officer), Laheria Sarai, Darbhanga.
7. The Municipal Commissioner, Darbhanga.
8. The Chief Executive Officer, Municipal Corporation, Darbhanga.
9. Miss Sabiha Khanam, Wife of Late Mohammad Alam Ahmad Khan, resident of Mohalla-Shahganj Benta, Ward No. 35, P.S. Laheriasarai, District-Darbhangha.
10. Aamir Aziz Alam Khan, resident of Mohalla-Shahganj Benta, Ward No. 35, P.S. Laheriasarai, District-Darbhangha.
11. Shah Suga Aziz Alam Khan, s/o Late. Allam Ahmad Khan resident of Mohalla-Shahganj Benta, Ward No. 35, P.S. Laheriasarai, District-Darbhangha.
12. Mukhtar Ahmad Khan, son of Late Asfaque Ahmad Khan, resident of Mohalla Benta, Police Station-Laheraisarai, District-Darbhangha.
13. Sabbir Ahmad Khan, son of Late Asfaque Ahmad Khan, resident of Mohalla Benta, Police Station-Laheraisarai, District-Darbhangha.
14. Abrar Ahmad Khan, son of Late Asfaque Ahmad Khan, resident of Mohalla Benta, Police Station-Laheraisarai, District-Darbhangha.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1469 of 2023)

For the Appellant/s	:	Mr. Kumar Kaushik, Advocate Mr.Ujjawal Bhushan, Advocate
For the DMC	:	Mr. Bindhyachal Rai, Advocate
For the Respondent/s	:	Mr. P.N. Sahi, AAG-12 Mr. Arun Kumar Bhaghat, AC to AAG-9



(In Civil Writ Jurisdiction Case No. 17164 of 2022)

For the Petitioner/s : Mr.Najeeb Ahmad, Advocate
For the Respondent/s : Mr.Sajid Salim Khan (SC-25)
For the DMC : Mr. Bindhyachal Rai, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-10-2024

The matter which rightly has to be agitated before the civil forum has been taken up in a proceeding under Article 226 of the Constitution of India. We called for the writ petition only finding the order impugned in the appeal to be in excess of the jurisdiction conferred under Article 226 of the Constitution of India or rather not a matter which could be agitated under Article 226 of the Constitution of India.

2. The Impugned order in the appeal indicates that the learned Single Judge had issued directions to the Municipal Commissioner, Darbhanga to give a report as to any construction made after the interim order of the Court. The interim order of the Court, as we see from the writ petition, was on 21.12.2022, wherein no further construction was to be made over the land in question.

3. The averments from the writ petition also indicate that there is a dispute between the writ petitioner and the 9th



respondent; the 9th respondent being the wife of the brother of the writ petitioner. Admittedly, the brother of the writ petitioner who is now deceased, had purchased two *kathas* of land and he also constructed a house and a shop in one *katha* of land. The balance one *katha* of land is said to have been gifted to the writ petitioner. The writ petitioner has also purchased some land on the boundary of the gifted property on which construction is carried out. The claim in the writ petition was that the 9th respondent has been carrying on constructions in the property thus blocking the way into the gifted property and the adjacent self acquired property.

4. The petitioner, in the writ petition has prayed for restraining the private respondents from encroaching or interfering upon the property of the petitioner, removal of unlawful and illegal construction carried out by the respondents and removal of blockage of the common pathway used by the writ petitioner and a further direction to the official respondents to remove the unlawful and illegal construction.

5. We are of the opinion that all these prayers are best agitated and properly too, in a civil suit filed before the appropriate Civil Forum. The learned Counsel for the appellants, who was the 9th respondent, also submits that they



have serious contentions against the gift asserted by the writ petitioner. The directions issued by the learned Single Judge according to us could not have been issued under Article 226 of the Constitution of India, especially since disputes on title along with identification of the properties on which conflicting claims are made, has to be adjudicated on a forum where evidence can be led and controverted; substantively.

6. The Municipal Commissioner, Darbhanga according to the learned Senior Counsel appearing for the writ petitioner has passed an order directing removal of encroachment on which the Tribunal has been approached by the 9th respondent. We make it clear that if removal of encroachment ordered by the Municipal Commissioner, Darbhanga is after adjudicating the dispute on title, necessarily the efficacy of such finding would also have to be considered by the Tribunal.

7. We are of the opinion that the appeal has to be allowed, setting aside the order impugned and since we have called for the writ petition also, we deem it appropriate to reject the writ petition, leaving the parties to agitate their respective causes before the appropriate civil forum. We make it clear that what we have recorded hereinabove is only the submissions made with respect to the conflicting claims of the parties and it



need not be taken as an observation on merits; which has to be considered by the appropriate civil forum, which is approached.

8. Learned Counsel for the appellants submit that four vehicles have been seized by the SHO, Laheriasarai Police Station on the ground that it was parked on the pathway thus violating the interim order of the learned Single Judge.

9. Since we have interfered with the interim order, the SHO, Laheriasarai Police Station is directed to immediately release the seized vehicles to its owners.

10. The appeal is allowed and the writ petition stands dismissed.

11. Interlocutory application(s), if any, shall stand disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

ranjan/-

AFR/NAFR	
CAV DATE	NA
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