

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.44 of 2023

Chandan Kumar Singh, son of late Kamleshwari Prasad Singh @
Kamleshwari Singh, Resident of Mohalla-Shivpuri, Behind Bal
Bharti School, Police Station-K. Hat, District-Purnea.

... .. Petitioner/s

Versus

1. Nagendra Pandey, son of Late Rooplal Pandey, resident of
Mohalla-Bari Hat, Police Station-K. Hat, District-Purnea.
2. Babloo Kumar Singh, son of Sri Ganesh Prasad Singh, resident of
Village-Dumra, Police Statlion-Bhawanipur, District-Purnea, at
present Sipahi Tola, Police Station-K. Hat, District-Purnea.
3. Sanoj Kumar Singh, son of Gajendra Prasad Singh, resident of
Village-Dumra, Police Statlion-Bhawanipur, District-Purnea, at
present Sipahi Tola, Police Station-K. Hat, District-Purnea.
4. Gautam Kumar Singh, son of Arvindra Prasad Singh, resident of
Chitrawani Road Bhatta, Police Station-K. Hat, District-Purnea.
5. Bijay Kumar Singh, son of Balbhadra Singh, resident of Sipahi
Tola, Police Station-K. Hat, District-Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jitendra Prasad Singh, Advocate Mr. Rajeev Kumar, Advocate
For the Respondent/s	:	None

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 04-07-2024

Heard learned counsel for the petitioner. Despite service
of notice, no one has appeared to represent the respondents.

2. The present petition has been filed under Article 227



of the Constitution of India against the order dated 25.11.2022 passed by learned Additional District and Sessions Judge-V, Purnea in Misc. Civil Appeal No. 02 of 2022 whereby and whereunder the order passed by the learned trial court vacating the order dated 03.12.2020 granting permission to the petitioner to repair the suit property and restraining the parties to make any construction has been affirmed by the learned appellate court and also the order dated 08.02.2021 passed by the learned Sub Judge-I, Purnea in Title Suit No. 169 of 2011.

3. Learned counsel for the petitioner submits that petitioner is the plaintiff of Title Suit No. 169 of 2011 filed for declaration of right, title and interest over the suit property. During pendency of the suit, plaintiff filed a petition on 20.06.2020 seeking permission to repair his four rooms with asbestos roof and bathroom. Subsequently, another petition was also filed by the plaintiff on 14.10.2020 under Order 39 Rule 1 of the Code of Civil Procedure (hereinafter referred to as 'the Code') for restraining the defendants from disturbing in repairing and renovation work of the suit property. Learned counsel further submits that the learned trial court call for a report by appointing Pleader Commissioner about the physical status of the suit land and the Pleader Commissioner submitted his report dated 29.11.2020 about the status of the suit property which was required to be repaired by the plaintiff. The



learned trial court after hearing the plaintiff, passed an order dated 03.12.2020 permitting the plaintiff to repair the suit property without changing the physical feature of the same. On the basis of permission granted by the learned trial court, plaintiff started the repair work but defendant 2nd set filed a petition 04.02.2021 for vacating the order on the allegation that plaintiff has misused the order passed by the learned trial court. On the basis of petition filed by the defendant 2nd set, another Pleader Commissioner was appointed to verify the physical feature and to submit a report in this regard. The Pleader Commissioner submitted a report on 08.02.2021 about the physical feature of the suit land. Learned counsel further submits that after receipt of the report, the learned trial court passed the order on 08.02.2021 vacating the order granting permission to repair. The petitioner being aggrieved by the order dated 08.02.2021 filed Civil Misc. Case No. 186 of 2021 before the High Court.

4. Thereafter due to urgency, the petitioner again moved before the learned trial court filing an application under Section 151 of the Code seeking permission from the court below for repair of old dilapidated thatched asbestos roof house and bathroom as the same were on verge of collapse. However, the said application was also rejected by the learned trial court and the plaintiff filed another civil miscellaneous petition bearing Civil



Misc. No. 224 of 2021. Civil Misc. No. 186 of 2021 and Civil Misc. No. 224 of 2021 were heard together and disposed of as not maintainable by a common order dated 25.04.2022. Availing the liberty granted by this Court while dismissing the civil miscellaneous petitions, the plaintiff filed an appeal under Order 43 Rule 1(r) of the Code before the learned District Judge, Purnea bearing Civil Misc. Appeal No. 02 of 2022 which has been transferred before the learned Additional District and Sessions Judge-V, Purnea. The lower appellate court after hearing the petitioner, dismissed the Civil Misc. Appeal No. 02 of 2022 vide impugned order dated 25.11.2022.

5. Learned counsel further submits that both the courts below have committed jurisdictional error by not considering the fact and legal position. The petitioner is in possession of the suit property and it is an admitted fact, therefore, such equitable relief like repairing of the dilapidated property could be allowed without any hindrance. The plaintiff has started the repair work with the leave of the court and the same should not have been vacated merely on the basis of allegation of disobedience without any sufficient material. The fact was brought to the notice of the learned trial court that physical feature of the suit property has not been changed and building materials were found at the site of the suit property. But the learned trial court did not appreciate the facts



though plaintiff has elaborately explained the reason for repairing of house as the dilapidated house was not in a position to be used for residential purposes. The bathroom and toilet situated over the suit land have deteriorated by efflux of time necessitating the repair work. Learned counsel further submits that admittedly the plaintiff is in possession and while granting permission for the first time the learned trial court took note of the fact that the plaintiff was having possession over the suit property and *prima facie* case for injunction was in his favour. Defendants have no loss from this repair and balance of convenience was in favour of the plaintiff. The learned counsel further submits that the plaintiff were given permission to repair the suit property with condition that they would not change the basic structure of the suit property and neither the plaintiff would make any new construction. Learned counsel further submits that since the suit property is a residential house and made of old asbestos roof and is a thatched structure. During pendency of the case the thatched wall as well as other part of the property requires repair in order to save the privacy and the structure has become so much dilapidated that it may cave in during rainy season. The plaintiff undertakes not to make any fresh construction except repairing the constructed part of the building as well as boundary already existing over the suit property. The plaintiff would suffer irreparable injury if not allow to repair the



boundary wall as well as damaged portion of his house.

6. I have given my thoughtful consideration to the facts and circumstances of the case and submission made on behalf of the plaintiff/petitioner. Since there is concurrent finding of two courts about the plaintiff/petitioner not abiding by the directions of the court for not making any new construction while permission was granted to repair the suit property already existing over the suit land. In the given facts and circumstances, I am not inclined to interfere with the finding of two courts. However, considering the rainy season and the fact that the suit property is residential and requires repair/maintenance to keep it habitable, to that extent order 25.11.2022 passed by learned Additional District and Sessions Judge-V, Purnea in Misc. Civil Appeal No. 02 of 2022 and order dated 08.02.2021 passed by the learned Sub Judge-I, Purnea in Title Suit No. 169 of 2011 need interference.

7. Hence, the plaintiff/petitioner is allowed to repair his residential house, boundary wall, toilet, bathroom and the structure which were existing at the time of submission of first report of the learned Pleader Commissioner within two months from the date of the order. It is made clear that no new construction would be made on the suit property and its physical feature would not be changed by making any construction except for the repair work. Learned trial court would take help of the Pleader Commissioner, if so



required, to ensure that there is no change in the physical feature of the suit property and no new constructions are erected. The impugned orders stand modified to the aforesaid extent.

8. Since it is a suit of 2011, the learned trial court is also directed to take immediate steps for its disposal and ensure the disposal of the title suit within a period of one year from the date of receipt/production of a copy of this order.

9. With the aforesaid observations and directions, the present petition stands partially allowed and disposed of.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.07.2024
Transmission Date	NA

