

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.146 of 2020

- 1.1. Premshila Devi Wife of Late Prasadi Sah, resident of Village-Aliganj Gangti, P.S.-Mojahidpur, District-Bhagalpur.
- 1.2. Ramjivan Kumar, son of Late Prasadi Sah, resident of Village-Aliganj Gangti, P.S.-Mojahidpur, District-Bhagalpur.
- 1.3. Sindhu Kumari Wife of Sadanana Sah, resident of Village-Manoharpur, Post-Barmasiya, P.S.-Pathargama, District-Bhagalpur.
- 1.4. Sindhu Devi, Wife of Kailash Prasad Sah, resident of Village-Aliganj, Post-Mirjanhat, P.S.-Mojahidpur, District-Bhagalpur.
- 1.5. Sangita Devi wife of Shashibhushan resident of Village-Kusma Badrava, Post-Pathna, P.S.-Ranga, District-Sahebganj (Jharkhand).
- 1.6. Baishali Bharti, Wife of Ajit Kumar Sah, resident of Village-Dharampur, Post-Pathna, P.S.-Ranga, District-Sahebganj (Jharkhand).

... .. Petitioner/s

Versus

1. Pooran Sah Son of Late Mainu Sah Resident of Aliganj, P.S.- Badarganj (Mojahidpur), P.O.-Mirjanhat, Anchal-Jagdishpur, District-Bhagalpur.
2. Masomat Shobha Devi Wife of Late Bishun Sah R/o-Village- Sultanpur Bhitthi, P.S. and P.O.-Sabour, District-Bhagalpur.
3. Manikant Sah Son of Late Bishun Sah R/o-Village- Sultanpur Bhitthi, P.S. and P.O.-Sabour, District-Bhagalpur.
4. Shashikant Sah Son of Late Bishun Sah R/o-Village- Sultanpur Bhitthi, P.S. and P.O.-Sabour, District-Bhagalpur.
5. Gunjan Devi D/o Late Bishun Sah, Wife of Modan Sah Resident of Village- and P.O. and P.S.-Kajraili, Anchal-Nathnagar, District-Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sharda Nand Mishra, Advocate Mr.Dhananjay Kumar Gupta, Advocate
For the Respondent/s	:	Mrs.Mallika Mazumdar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 24-07-2024

The instant Civil Miscellaneous Petition has been filed
under Article 226 of the Constitution of India for quashing the



order dated 22.11.2019 passed by learned Additional District Judge-Ist, Bhagalpur in Misc. Case No. 20 of 2017, whereby and whereunder the learned Appellate Court dismissed the appeal and affirmed the order dated 12.09.2017 passed by learned Sub Judge-I, Bhagalpur in Title Suit No. 622 of 2016. The petitioner has further sought quashing of the order dated 12.09.2017 passed by learned Sub Judge-I, Bhagalpur in Title Suit No. 622 of 2016, whereby and whereunder the learned trial court rejected the petition dated 10.01.2017 filed under Order 39 Rule 1(a)(b) read with Section 151 of the Code of Civil Procedure (hereinafter as 'the Code') with further prayer to allow the injunction petition dated 10.01.2017 filed by the petitioner.

2. Briefly stated, the facts of the case are that the petitioners are the descendants of one Prasadi Sah who filed Title Suit No. 622 of 2016 seeking declaration that the plaintiff is the original owner of the suit land as described in Schedule-A of the plaint having valid right, title and interest over it and further declaring the sale deed dated 20.03.1990 executed by one Bishun Sah as null and void and not operating and not binding upon the plaintiff and also for recovery of possession of the suit land. The suit land is said to be of Khata No. 285,



Khesra No. 1596(Kh), area 0.0021 $\frac{1}{4}$ hectare, Mouza – Nagar Nigam, Bhagalpur, Survey Ward No. 27 (942), Anchal – Jagdishpur, District – Bhagalpur having boundary North – Bishun Sah, South – Sakhichan Sah, East – Bonsi Road and West – Rajendra Sah. The case of the plaintiff is that on 30.05.1984, the khatiyani holders divided their share and all the parties came in physical possession over their respective share on the basis of partition and Jamabandi was created on the basis of said partition deed. The parties started paying rent and got their rent receipts. On the basis of Batwaranama dated 30.05.1984 khatiyani holder namely, late Bishun Sah sold his share to defendant 1st party/respondent no. 1 through sale deed No. 2265 dated 15.02.1989, 20.03.1990 having total area 0.0036 $\frac{1}{4}$ hectare. Further case of the plaintiff is that Bablu Sah was the common ancestor having sons namely Chulahi Sah and Maulu Sah. Chulahi Sah had four sons and three daughters whereas Bholu (Maulu) Sah had two sons. Sons of Chulhai Sah were Sakhichand Sah, Mahendra Sah, Rajendra Sah and Hari Sah whereas sons of Maulu Sah are Prasadi Sah and Bishun Sah. Partition took place on 30.05.1984 between sons of Chulhai Sah and Maulu Sah. In the partition, the disputed plot bearing Khata No. 282, Khesra No. 1596(Kh), area 0.0042 $\frac{1}{2}$ hectare was



allotted in the share of the original plaintiff and his brother Bishun Sah who got 0.0021 $\frac{1}{4}$ hectare each in disputed plot. However, Bishun Sah sold 0.0036 $\frac{1}{4}$ hectare with defendant Pooran Sah and thus, he sold more than 0.0021 $\frac{1}{4}$ hectare, from the disputed plot whereas he had no title or possession over the said land. As Bishun Sah was used to gambling and was an addict and the defendant Pooran took advantage of this fact got the land transferred in his name, all the parties of the Batwaranama filed Title Suit No. 67 of 1989 which was dismissed for non-appearance of the parties and thereafter, on the basis of sale deed, Pooran Sah got the mutation done in the year, 2009 in his name without notice to the plaintiff and plaintiff filed Mutation Case Case No. 17/2010-11 before the D.C.L.R., Bhagalpur who allowed the application and set aside the order of the Circle Officer, Jagdishpur. Against that order Pooran Sah went into appeal before the Collector and the appeal was allowed. Thereafter, the plaintiff filed a revision before the Divisional Commissioner, Bhagalpur which was pending at the time of filing of the petition. Meanwhile, defendant Pooran Sah forcibly dispossessed the plaintiff and the plaintiff was compelled to file the present Title Suit No. 622 of 2016. In the title suit injunction petition dated 10.01.2017 was filed and



heard by the learned Sub Judge-I, Bhagalpur, who rejected the petition vide order dated 12.09.2017. Aggrieved by the order of learned Sub Judge, the plaintiff filed appeal under Order 43 Rule 1 of the Code vide Misc. Appeal No. 20 of 2017 but the appeal was dismissed vide order dated 22.11.2019. Both the orders of the learned trial court as well as learned appellate court are under challenge in the present petition.

3. Learned counsel for the petitioner submitted that both the courts below failed to consider that the vendor of defendant Pooran Sah got in share only 0.0021 $\frac{1}{4}$ hectare land of Plot No. 1596(Kh) yet Bishun Sah sold 0.0036 $\frac{1}{4}$ hectare land to the defendant and it is very much apparent that he has sold over and above his share though he has neither title nor possession over the said land. Both the courts below failed to consider the Batwaranama in this regard. Learned counsel further submitted that the plaintiff is having *prima facie* case on the basis of Batwaranama of 1984. Since defendant has forcibly ousted the plaintiff from the land and is going to construct a building after dispossessing the plaintiff, the balance of convenience and irreparable loss are also in favour of the plaintiff. However, the learned trial court as well as learned appellate court did not take into consideration these aspects of



the matter and rejected the injunction petition filed by the plaintiff. Therefore, the orders of the learned subordinate courts are not sustainable and are required to be set aside.

4. Per contra, learned counsel appearing on behalf of the respondents submitted that there is no infirmity in the impugned order and the same needs to be sustained. Learned counsel submitted that the plaintiff has, in fact, sold much of his share of land and has brought the title suit with wrong statement and concealing a number of facts. Title Suit No. 67 of 1989 was filed by the plaintiff and others claiming that there has been no partition in the family and Title Suit No. 67 of 1989 was a suit for partition. However, the plaintiff filed Title Suit No. 622 of 2016 claiming that there had been partition in the family way back in the year 1984. On the disputed plot of land a proceeding under Section 144 Cr.P.C. was initiated and the matter travelled to the court of learned District Judge in criminal revision which was decided in favour of the defendants. Even in the mutation case, the revision before the Commissioner, Bhagalpur filed against the order of the appellate court of the Collector, Bhagalpur has been decided in favour of the defendant on 20.04.2017. The municipal as well as anchal receipts are also issued in the name of this defendant. But these



facts were not disclosed by the plaintiff in the present case. Learned counsel further submitted that actually Chulhai Sah and Maulu Sah, two sons of Bablu Sah got 1668 sq. feet of land each and out of 1668 sq. feet. Prasadi Sah and Bishun Sah got 834 sq. feet. Despite getting only 834 sq. feet, Prasadi Sah has sold till date 2479 sq. feet which means Prasadi Sah, the plaintiff of the present suit has sold his share, his brother's share and the share of even his agnates. On the other hand, Bishun Sah has sold only 392 sq. feet to Pooran Sah vide two sale deeds of 1989 and 1990. Pooran Sah came in possession of the said land and which is an admitted fact. The municipal and anchal receipts have been issued in his favour and thereafter, mutation was done in the name of the defendant Pooran Sah. All these facts go on to show that the defendant Pooran Sah has a strong *prima facie* case. Further, the balance of convenience would lie in favour of the defendant and any injunction against the defendant could result into irreparable loss to him and not to any other person.

5. Learned counsel further submitted that there is concurrent finding of the two subordinate courts these orders could not be lightly interfered with unless there is any material irregularity or perversity. Learned counsel referred to the case of



The Managing Director (MIG) Hindustan Aeronautics Ltd. nd another Vs. Ajit Prasad Tarway, Manager and another reported in ***AIR 1973 Supreme Court 76***, wherein the Hon'ble Supreme Court has held that the High Court had not jurisdiction to interfere with the order of the first appellate court if the High Court has not recorded its finding that first appellate court had no jurisdiction to make the order that it made. The Hon'ble Supreme Court further held that the order of the first appellate court may be right or wrong, may or may not be in accordance with law, but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction under Section 151 of the Code of Civil Procedure. Thus, learned counsel submitted that there is no infirmity in the impugned orders and the same needs to be sustained.

6. Having regard to the rival submission in the facts and circumstances of the case, it is much apparent that the plaintiff and the defendant both are claiming the disputed plot of land and in support thereof they are relying on certain documents. The case of the plaintiff is based on his claim as co-



sharer with the vendor of the defendant Pooran Sah on the ground that his father, the vendor of the defendant sold land in excess of his share. This fact is disputed by the defendant. This claim of the plaintiff is countered by the defendant with counter allegation that the plaintiff has already sold all his land and even the land of his brother and other agnates. From the record it appears that the claim is with regard to Khesra No. 1596(Kh) but in Khesra No. 1596(Kh) from the document of Batwaranama it appears that in that Khesra No. 1596(kh) the other co-sharer have also got their land. The learned trial court has taken note of this fact and has held that along with Khesra No. 1596(Kh), the defendant is entitled to share of 0.0077 ½ hectare and he has sold only 0.0036 ¼ hectare. So there appears some doubt over claim of the plaintiff as to the exact share and the description of land. But the same is the matter of trial and the parties are required to prove their respective claim by leading cogent evidence. At this stage, this Court is not require to enter into the merits of respective claim of the parties.

7. At the same time, two concurrent orders of learned Subordinate Courts are under challenge before this Court. It is the settled law that if there is concurrent finding of two courts, the High Court should not interfere with the orders



unless there is material irregularity or illegality or perversity. But I do not find any such infirmity in the impugned orders. Admittedly, the defendant/respondent no. 1 is in possession of the suit property. His claim is based on purchase through co-sharer of the plaintiff though it is the claim of the plaintiff that his co-sharer sold in excess of his land. Further, the mutation stands in the name of the defendant/respondent no. 1 who is paying rent and receipts are issued in his name. Taking all these facts together, it shows a *prima facie* case in favour of the defendant/respondent no. 1. If Title Suit No. 67 of 1989 was filed claiming that there has been no partition and if this plaintiff was party to that suit, after so many years, the plaintiff cannot be allowed to set up an entirely new case in the instant suit bearing Title Suit No. 622 of 2016. If no *prima facie* case is found in favour of the plaintiff, the plaintiff faltered at the first stage of the triple test, i.e., having *prima facie* case. Therefore, there arises no issue of consideration of balance of convenience or irreparable loss, if there is no *prima facie* case of the plaintiff. The learned subordinate courts have recorded their finding about *prima facie* case being not in favour of the plaintiff and they have also recorded no irreparable loss would come to the plaintiff.



8. Considering all these facts and circumstances, I do not find any material irregularity or illegality in the impugned orders or for that matter any error of jurisdiction and hence, the impugned orders are affirmed.

9. In the result, the present Civil Miscellaneous Petition stands dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	27.06.2024
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Transmission Date	N.A.

