

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.68 of 2024

Nilima Sharma, Wife of Bhushan Sharma, resident of village - Paiga, Post - Gundi, P.S. - Barhara, District - Bhojpur.

... .. Petitioner/s

Versus

1. Padamdev Narain, Son of Late Sidheshwar Lal, resident of village - Paiga, Post - Gundi, P.S. - Barhara, District - Bhojpur.
2. Lalan Lal, Son of Late Nageshwar Lal and Mother s Name Late Shail Kumari Devi, resident of village- Mirganj Ara, Near Pani Tanki, P.O.- Ara, P.S. - Ara Town, District - Bhojpur.
3. Punu Lal, Son of Late Rajdeo Lal and Mother s Name Sabitri Devi, D/o Late Ram Naresh Lal, resident of Village - Paiga, P.O. - Gundi, P.S. - Barhara, District - Bhojpur.
4. Paramhansh Narain, Son of Late Sidheshwar Lal, resident of Village - Paiga, P.O. - Gundi, P.S. - Barhara, District - Bhojpur.
5. Krishnadeo Narain, Son of Late Sidheshwar Lal, resident of Village - Paiga, P.O. - Gundi, P.S. - Barhara, District - Bhojpur.
6. Smt. Suraya Kumari Devi, Wife of Shri Narendra Prasad Srivastav, D/o Late Sidheshwar Lal, resident of Village - Paiga, P.O. - Gundi, P.S. - Barhara, District - Bhojpur. At present resident of village- Kanai, Post - Drubdiha, P.S. - Char Pokhari, District - Bhojpur.
7. Bijoy Narayan Lal, Son of Late Satyadeo Narayan Lal, resident of Village - Paiga, P.O. - Gundi, P.S. - Barhara, District - Bhojpur. At present resident of Mohalla - Maulabagh Ara, P.S. - Ara Nawada, District - Bhojpur.
8. Jay Narayan Lal, Son of Late Satyadeo Narayan Lal, resident of Village - Paiga, P.O. - Gundi, P.S. - Barhara, District - Bhojpur. At present resident of Mohalla - Maulabagh Ara, P.S. - Ara Nawada, District - Bhojpur.
9. Krishna Narayan Lal, Son of Late Satyadeo Narayan Lal, resident of Village - Paiga, P.O. - Gundi, P.S. - Barhara, District - Bhojpur. At present resident of Mohalla - Maulabagh Ara, P.S. - Ara Nawada, District - Bhojpur.
10. Bhola Narayan Lal, Son of Late Satyadeo Narayan Lal, resident of Village - Paiga, P.O. - Gundi, P.S. - Barhara, District - Bhojpur. At present resident of Mohalla - Maulabagh Ara, P.S. - Ara Nawada, District - Bhojpur.
11. Smt. Ram Kumari Devi, D/o Late Satyadeo Narayan Lal, and Wife of Shashi Shekhar Lal, resident of village - Bakri, P.S. - Udwant Nagar, Post- Karwan, District - Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. K.N. Choubey, Sr. Advocate Mr. Ambuj Nayan Choubey, Advocate Mr. Dineshwar Pandey, Advocate Mr. Prashant Kumar, Advocate Mr. Shashank Shekhar Dubey, Advocate
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For the Respondent no.1 : Mr. Mohit Kumar, Advocate
Mr. Sunil Kumar Sinha, Advocate
Mr. Binod Kumar Labh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 31-07-2025

The present petition has been filed by the petitioner for quashing the order dated 16.12.2023 passed in Misc. Appeal No. 37/2022 by the learned Additional District Judge-8th, Bhojpur at Ara dismissing the appeal and affirming the order dated 27.05.2022 passed by the learned Sub Judge- 8th, Bhojpur at Ara in Title Partition Suit No.531/2013 whereby and whereunder the petitioner has been ordered to demolish all constructions from the disputed land within three months from the date of order, failing which the District Magistrate, Bhojpur at Ara was directed to remove any construction and make the land clear at the cost of the petitioner and also to attach any property lying on the land.

2. Briefly stated the facts leading to filing of the present case are that respondent no.1 instituted Title Partition Suit No. 531/2013 against his co-sharers claiming 1/12th share in the property mentioned in Schedule-2 of the plaint. The suit land measures about 14 acres. The relevant land appertains to Khata No. 152, Plot No. 360 in village-Paiga, P.S.-Barhara, District-Bhojpur and its total area is said to be 76 decimals.



Admittedly, respondent nos. 4 and 5, who are the brothers of the respondent no.1 are also entitled to 1/12th share in the entire property measuring about 14 acres. The respondent nos. 4 and 5 are defendant nos. 3 and 4 before the learned trial court.

3. It further transpires that the *ex-parte* injunction order over the suit property was passed by the learned trial court. The defendant nos. 3 and 4/respondent nos. 4 and 5 executed two registered sale deeds dated 01.03.2017 and 22.11.2017, respectively in favour of the petitioner in respect of 16.88 decimals of land during the pendency of the partition suit. The petitioner, after purchase of the land, constructed her house and shops on the land which was completed before 01.05.2019, the date at which she was directed to stop construction which, however, was vacated in terms of order dated 20.05.2019.

4. Further, at the instance of the plaintiff/respondent no.1 vide order dated 16.07.2019, the petitioner was added as party defendant no.7 and she filed her written statement. The learned trial court further directed the parties to maintain status quo and to stop construction on 14.11.2019. In the said case, the plaintiff/respondent no.1 filed a petition on 26.04.2022 under Order 39 Rule 2A of the Code of Civil Procedure (hereinafter referred to as 'the Code'). The learned trial court, vide order



dated 27.05.2022, directed the petitioner to demolish the construction made on the purchased land, failing which the District Magistrate, Bhojpur at Ara had been authorized to demolish the same.

5. Aggrieved by the aforesaid order of the learned Sub Judge-8, Bhojpur at Ara, the petitioner preferred Misc. Appeal No.37/2022. The said appeal was dismissed on 16.12.2023 affirming the order of the learned trial court.

6. Aggrieved by the order dated 16.12.2023 passed in Misc. Appeal No. 37/2022, the petitioner has approached this Court by filing the instant civil miscellaneous petition.

7. Mr. K.N. Choubey, learned senior counsel appearing on behalf of the petitioner, at the outset, submitted that the orders passed by the learned Additional District Judge-8th, Bhojpur at Ara and also learned Sub Judge-8th, Bhojpur at Ara are completely illegal orders and have been passed without consideration of the facts and law. The order dated 06.02.2016 was passed granting injunction to the plaintiff against all defendants, but the suit had been proceeding *ex-parte* against all the defendants including the vendor of the petitioner Nilima Sharma. At that time, the petitioner was nowhere in picture. Subsequently, after execution of two sale deeds dated



01.03.2017 and 22.11.2017 in her favour by the defendant nos. 3 and 4, she purchased a portion of suit land, but she was not having any knowledge about the injunction order. As the petitioner was not a party before the learned trial court, she filed an application on 07.05.2019 before the learned trial court submitting that the plaintiff/respondent no.1 got an order making wrong submission on 01.05.2019 and a similar petition of the plaintiff/respondent no.1 was dismissed by the court of learned Sub Judge-7 in Title Suit No. 783/2018. The plaintiff concealed this fact. After hearing the parties, learned Sub Judge-8, vide order dated 20.05.2019, modified its order dated 01.05.2019 regarding *status quo* and took out the petitioner Nilima Sharma from its ambit and the learned trial court also held that the said order would not be effective against the petitioner Nilima Sharma.

8. Mr. Choubey further submitted that, however, in a subsequent order dated 14.11.2019, without recalling its earlier order dated 20.05.2019, the same court held that the petitioner would also come in the purview of orders dated 06.02.2016 and 01.05.2019, holding that it was necessary to maintain the sanctity of previous orders of this court. Thus, learned trial court allowed the injunction petition dated 11.09.2019 and both the



parties along with purchaser/defendant no.7/petitioner were directed to maintain *status quo* and further directed the concerned defendant to stop the construction work over the disputed land till further orders of this court. Though this order was not challenged, but it is a completely illegal order and cannot be accepted and complied by the petitioner. The same court, vide order dated 20.05.2019, took out the petitioner from the ambit of its order dated 01.05.2019, but without taking into consideration its earlier order and also without considering the fact that the petitioner could not have any knowledge of order dated 06.02.2016, it was not open for the learned trial court to direct that the injunction order would be applicable even on the petitioner. When the petitioner was not even party, applying the order of injunction retrospectively was completely illegal and void order. Moreover, this order is in breach of provision contained in the Order 39 Rule 3 of the Code.

9. On this aspect, Mr. Choubey referred to the decision of the Hon'ble Supreme Court in the case of ***Nawabkhan Abbaskhan v. State of Gujarat, AIR 1974 SC 1471***, wherein the Hon'ble Supreme Court in paragraph 20 held as under :

“20. We express no final opinion on the many wide-ranging problems in public law of illegal orders and violations thereof by citizens, grave though



some of them may be. But we do hold that an order which is void may be directly and collaterally challenged in legal proceedings. An order is null and void if the statute clothing the Administrative Tribunal with power conditions it with the obligation to hear, expressly or by implication. Beyond doubt, an order which infringes a fundamental freedom passed in violation of the audi alteram partem rule is a nullity. When a competent court holds such official act or order invalid, or sets it aside, it operates from nativity, i.e., the impugned act or order was never valid. The French jurists call it L'inexistence or outlawed order (Brown and Garner: French Administrative Law, p. 127) and could not found the ground for a prosecution. On this limited ratio the appellant is entitled to an acquittal. We allow his appeal”.

10. Mr. Choubey further submitted that the conduct of the learned trial court is not above board and the court proceeded in completely biased manner to help the plaintiff/respondent. When the plaintiff/respondent no.1 filed a petition on 26.04.2022 under Order 39 Rule 2A of the Code, the learned trial court did not institute any miscellaneous case as required under Rule 459 (XII) of the Civil Court Rules. If a thing is required to be done in a particular manner, it must be done in that manner only or it would not be done at all.

11. Mr. Choubey further referred to the decision of Privy Council in the case of **Nazir Ahmad vs. King-Emperor**,



AIR 1936 Privy Council 253, wherein it has been held that if a statute provides for a thing to be done in a particular manner, it must be done in that manner or not at all.

The proceeding on the application dated 26.04.2022 is without following the due process as no opportunity was given to the petitioner to adduce the evidence and the unfounded allegations made by the plaintiff/respondent no.1 were taken as gospel truth. The learned trial court, vide order dated 27.05.2022, directed the petitioner to demolish all the structures on her purchased land. But the petitioner did not make any construction over her purchased land after passing of the injunction order and whatever construction has been existing, it was erected prior to coming into force of the injunction order against the petitioner. The learned trial court did not further consider the fact that in any event, the petitioner being a *pendente lite* purchaser, land transferred in her name is subject to provisions contained in Section 52 of the Transfer of Property Act and her property would be required to be adjusted from the share of her vendor and *Takhta* could be allotted in favour of her vendor for the purchased land of the petitioner.

12. Mr. Choubey further submitted that the plaintiff did not come before the learned subordinate court with clean



hands as his prayer for injunction was already rejected in Title Suit No. 703/2018 which the plaintiff had filed against the petitioner and others.

13. Mr. Choubey referred to the decision of the Hon'ble Supreme Court in the case of *S.P. Chengalvaraya Naidu v. Jagannath & Ors.*, AIR 1994 SC 853, wherein the Hon'ble Supreme Court quoted the observation of the Chief Justice Edward Coke of England made about three centuries ago that "fraud avoids all judicial acts, ecclesiastical or temporal". The Hon'ble Supreme Court further held that the courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands and finally their Lordships held that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

14. Mr. Choubey further submitted that even the order dated 16.12.2022, passed in Misc. Appeal No. 37/2022, has perpetuated the wrong committed by the learned trial court. Even for breach of injunction order passed under Order 39 Rules 1 & 2 of the Code, the law authorizes the court only to attach the property of guilty of such disobedience and such person can be detained in civil prison for a term not exceeding



three months. Therefore, both the orders suffer from *coram non judice*. The courts could not have ordered for demolition of structure erected by the petitioner in a proceeding initiated under Order 39 Rule 2A of the Code. Moreover, only when it was found that the petitioner violated the order dated 14.11.2019, then only it could be said to be disobedience by the petitioner. The petitioner has not been proceeded against for violation of the order dated 14.11.2019, rather she has been proceeded for violation of order dated 06.02.2016. When the petitioner was not a party in the order dated 06.02.2016 and subsequently, she was taken out from the ambit of injunction order vide order dated 20.05.2019, there was no scope for proceeding against the petitioner for disobedience of injunction order. Again the order dated 27.05.2022 was passed without hearing the petitioner and principles of natural justice demand no person should be condemned unheard and Mr. Choubey submitted that even Adam was not condemned unheard. It is immaterial if the petitioner got the opportunity of hearing at the appellate stage because deficiency of opportunity at original level would not cure sufficiency of opportunity at subsequent level. Mr. Choubey relied on the decision of the Hon'ble Supreme Court in the case of ***Tilak Chand Magatram Obhan v.***



Kamala Prasad Shukla & Ors., 1995 Supp (1) SCC 21,
wherein it has been stressed that decision of the appellate authorities could not cure the initial defect in the constitution of the Enquiry Committee and the consequences flowing from one of the members of the Enquiry Committee being biased. Deficiency of natural justice before a trial tribunal can not be cured by a sufficiency of natural justice before an appellate tribunal and hence, it was held that a failure to natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.

15. Mr. Choubey further reiterated that passing such order directing for demolition of structure are alien to the power of the court conferred by Order 39 Rule 2A of the Code. Moreover, the order which is said to have been disobedience was a void order passed in breach of Order 39 Rule 3 of the Code.

16. Mr. Choubey further submitted that it is very surprising that though the plaintiff/respondent no.1 sought action against the petitioner for violation of injunction orders, he did not seek any such action against his brothers/defendant nos. 3 and 4/respondent nos. 4 and 5, who are the original culprits and sold the suit property during pendency of the partition suit.



Even though their names have been mentioned in the petition filed under Order 39 Rule 2A of the Code, none of the courts which took up the matter passed any order against them. This is quite strange.

17. Mr. Choubey further submitted that though majesty of the court is to be upheld at any cost, but vanity of the presiding judge could not be equated with majesty of the court. Thus, Mr. Choubey submitted that as the petitioner has not committed any breach of orders of the learned trial court, there was no occasion for the learned Additional District Judge-8, Bhojpur at Ara to pass any orders against this petitioner, more so, an order directing for demolition of structure, on a petition filed under Order 39 Rule 2A of the Code. Hence, the orders of the learned trial court as well as learned appellate court are illegal orders passed by the courts in excess of their jurisdiction and are liable to be set aside.

18. Mr. Choubey further referred to the Constitution Bench decision of the Hon'ble Supreme Court in ***Special Reference No. 1 of 1964, AIR 1965 SC 745***, wherein the Hon'ble Supreme Court held in paragraph 142 as under :

“142. Before we part with this topic, we would like to refer to one aspect of the question relating to the exercise of power to punish for



contempt. So far as the courts are concerned, Judges always keep in mind the warning addressed to them by Lord Atkin in Andre Paul vs. Attorney-General of Trinidad, AIR 1936 PC 141. Said Lord Atkin, "Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful even though out-spoken comments of ordinary men". We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearless-ness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct. We venture to think that what is true of the judicature is equally true of the Legislatures".

19. Mr. Choubey further referred to the decision of the Hon'ble Supreme Court in the case of ***Thomson Press (India) Ltd. v. Nanak Builders and Investors Private Limited & Ors., AIR 2013 SC 2389***, wherein the Hon'ble Supreme Court while dealing with doctrine of *lis pendens* has held that the doctrine of *lis pendens* is a doctrine based on the ground that it is



necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title *pendente lite*. The provision of this section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation. It has further been held that a transfer *pendente lite* is not illegal *ipso jure* but remains subservient to the pending litigation. It has further been held that although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent court, but there is no reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise, ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor.

20. Mr. Choubey further submitted that there is culpable arbitrariness in the impugned orders and this goes against the established principles of law that a judge should act impartially and pass any orders supported with reasons and not



to act capriciously or on whims. In this regard, Mr. Choubey referred to what Greek philosopher Socrates said about qualities of a judge :

‘A judge has duty to hear courteously; to answer wisely; to consider soberly and to decide impartially’.

21. Thus, Mr. Choubey submitted that order could only be in accordance with law. As no miscellaneous case was instituted in terms of Rule 459 of the Civil Court Rules regarding institution of miscellaneous case and Section 141 of the Code was not followed as after institution of miscellaneous case, the proceeding has to take place in the same manner as a suit proceeds. No evidence was recorded about disobedience of the orders by the petitioner and the impugned orders have been passed based only on pleadings, such orders could not be sustained.

22. *Per contra*, learned counsel appearing on behalf of the respondent no.1 vehemently contended that the learned subordinate courts have passed the orders considering the facts and circumstances of the case and the law applicable and, for this reason, the impugned orders do not need any interference by this Court. The learned counsel further submitted that the petitioner had knowledge of the injunction order dated



06.02.2016 and also the pendency of Title Suit No.531/2013, but in willful and deliberate disobedience of the orders of the learned trial court, the petitioner has been pleading innocence and misusing the procedural gaps in the law. The petitioner and the respondent 2nd set executed two sale deeds dated 01.03.2017 and 22.11.2017 even after specific preventive injunction order dated 06.02.2016 passed by the learned trial court restraining any kind of sale or creation of any third party right over the suit property. The petitioner also succeeded in constructing a house over the said suit land during the operation of the aforesaid preventive injunction order. The petitioner continued her illegal construction over the suit property even after becoming a party in the suit.

23. The learned counsel for the respondent no.1 further submitted that the suit land was initially a mango orchard and it was not a vacant residential land as claimed by the petitioner. The learned counsel further submitted that the petitioner filed *vakalatnama* in Title Suit No.531/2013 on 07.05.2019 and also filed some petitions on 07.05.2019, 10.05.2019 and 13.05.2019, which were disposed of on 20.05.2019. The proceeding under Section 144 Cr.P.C. was initiated vide Case No. 267/2018 dated 10.11.2018 in which the petitioner and respondents Krishna Deo



Narayan and Paramhans Narayan filed their respective show cause reply. In her reply, the petitioner stated that when she started making house on her purchased land, on that very date and time, Padma Deo Narayan filed a case against her. Further proceedings under Section 144 Cr.P.C. were also initiated from time to time and in one such case, the petitioner filed show cause reply on 29.11.2019 and her statement shows that when she had been making construction, she was well aware about the preventive injunction order dated 06.02.2016 passed by the learned Sub Judge-8th, Bhojpur in Title Suit No. 531/2013. The Sub-Divisional Magistrate, Ara Sadar in a proceeding under Section 188 Cr.P.C. vide Case No. 32/2019 recorded a finding that Nilima Sharma, the petitioner herein, claimed that she completed her construction on the land of Title Suit No. 531/2013 on 30.08.2019. The SHO, Barhara reported on 26.11.2019 that the petitioner had violated the order dated 04.11.2019 passed by the SDM, Sadar, Ara in 144 Cr.P.C. proceeding. These facts go on to show that the petitioner was having knowledge about the preventive injunction order all along and she willfully disobeyed the injunction order. The proceeding under Section 144 Cr.P.C. vide Case No.267/2018 against the petitioner and respondent Paramhans Narayan and



others was dropped on 08.01.2019 on the ground of pendency of Title Suit No. 703/2018 after show cause replies of the opposite parties have been submitted.

24. The learned counsel for the respondent no.1 further submitted that respondent no.1 has also filed a Title Suit No. 703/2018 on 26.11.2018 and the said title suit was filed to declare the sale deed no.1628 dated 01.03.2017 and sale deed no.11597 dated 22.11.2017 executed by defendant nos. 4 and 3, respectively in favour of the petitioner as null and void being hit by doctrine of *lis pendens* and in violation of preventive injunction order dated 06.02.2016. The said suit was filed regarding the same suit property which is under consideration in Title Suit No.531/2013. The petitioner filed Mutation Case No. 16/R-27/2018-19 and Mutation Case No. 17/R-27/2018-19 before the Circle Officer, Barhara in which local inspection was done by the *Halka Karamchari* on 14.12.2018 and 15.12.2018, respectively and *Halka Karamchari* specifically submitted that the lands are *Parti* lands and no construction whatsoever existed on them. The mutation petition of the petitioner was allowed on 14.12.2018 and 15.12.2018. However, these orders were set aside in Mutation Appeal Nos. 521/2020-2021 and 522/2020-2021, respectively. The learned trial court passed several



injunction orders on 06.02.2016, 07.07.2018, 01.05.2019 and 14.11.2019 but to no avail and the petitioner, with all the knowledge of the pendency of the suits and preventive injunction orders, deliberately and forcefully completed the illegal construction of the structures *lis pendens* and in violation of the preventive injunction order dated 06.02.2016. The impugned order dated 16.12.2023 and the order dated 27.05.2022 passed by the learned trial court are the orders to put the party back to the same position as they stood at the time of passing of the preventive injunction order dated 06.02.2016. The impugned order is not an order passed under Order 39 Rule 2A of the Code, rather it is an order passed for compliance of the earlier orders. The provision of Order 39 Rule 2A of the Code has been inserted as a penal provision and under this provision, when the learned subordinate courts have not imposed any penalty of civil prison or attachment of property of the petitioner, and after taking note of the admission of the petitioner about the prior knowledge of the preventive injunction orders with the knowledge of the pendency of the suits, came to the conclusion that the petitioner has made the mockery of law by abusing the process of law and, therefore, passed an order only to restore the suit property sans *lis pendens*



construction. The petitioner has got no right, title and interest over the suit property as she is a *lis pendens* purchaser during the operation of preventive injunction order.

25. The learned counsel for the respondent no.1 further submitted that it is well settled principle of law that justice prevails over the law, as such, order impugned has been passed in the interest of justice and to honour the procedural aspect of law and the learned subordinate court has not imposed any penal consequence upon the petitioner even after reaching to a conclusion of her willful disobedience.

26. The learned counsel for the respondent no.1 further submitted that in any case, the petitioner got the knowledge latest by 30.11.2018 and in her show cause before the SDM, she admitted making construction over the suit land till 30.08.2019. Though the petitioner Nilima Sharma gave contradictory statements before different forums, but she continued construction over the land of both the sale deeds up-to 26.11.2019 and this is evident from the report dated 26.11.2019 submitted by the SHO, Barhara in compliance of the orders of SDM, Sadar, Ara dated 18.11.2019.

27. Thus, learned counsel submitted that sale of the suit land even after specific preventive injunction order and



illegal *lis pendens* construction over it by the purchaser Nilima Sharma, despite several legal proceedings, shows that respondent forced the hands of the court in passing the impugned orders as the court can not remain moot spectator to the violation of its orders by the petitioner. The learned counsel further submitted that in a catena of decisions, the Hon'ble Supreme Court has held that if the nature of suit property is changed, the courts could order for restoring the suit property to its previous state and, therefore, there is no infirmity in the orders directing the petitioner Nilima Sharma to demolish the structure created despite injunction orders and clearing the land of any such construction to restore its previous status. The learned counsel cited a large number of authorities of the Hon'ble Supreme Court and different High Courts in support of his contention.

28. The learned counsel first referred to the decision of the Hon'ble Supreme Court in the case of ***Jehal Tanti & Ors. vs. Nageshwar Singh (D) through LRs, AIR 2013 SC 2235*** wherein the Hon'ble Supreme Court held that if a sale deed was executed in favour of the respondent no.1 in the teeth of the order of injunction passed by the trial court, the same would be unlawful under the provisions of Section 23 of the Indian



Contract Act, 1872. In *Jehal Tanti* (supra), the Hon'ble Supreme Court relied on the case of *Tayabbhai M. Bagasarwalla and anr. vs. Hind Rubber Industries Pvt. Ltd. and Ors., (1997) 3 SCC 443*, wherein the defendants were held liable for consequences of their disobedience and violation of the interim injunction order though it was subsequently found that the court was lacking jurisdiction by the High Court. Another decision relied on by the Hon'ble Supreme Court is the decision rendered in the case of *Vidur Impex and Traders (P) Ltd. and Ors. vs. Tosh Apartments (P) Ltd., (2012) 8 SCC 384*, where sale deeds were executed in violation of injunction order by the Delhi High Court and it was held that agreements for sale and sale deeds executed by the respondent no.2 in favour of the appellants did not have any legal sanctity.

29. The learned counsel in respect of unlawful action in the matter of pending before a court referred to the view taken by the Hon'ble Supreme Court in the case of *Samir Sobhan Sanyal vs. Tracks Trade Pvt. Ltd. and Ors., AIR 1996 SC 2102*, wherein it has been held in paragraph 6 as under :

“...we find that high-handed action taken by the respondent Nos. 1, 3 and 6 in having the appellant dispossessed without due process of law, cannot be overlooked nor condoned. The Court cannot blink at their unlawful conduct to dispossess the



appellant from demised property and would say that the status quo be maintained. If the Court gives acceptance to such high-handed action, there will be no respect for rule of law and unlawful elements would take hold of the due process of law for ransom and it would be a field day for anarchy. Due process of law would be put to ridicule in the estimate of the law-abiding citizens and rule of law would remain a mortuary”.

30. The learned counsel next referred to the decision of the Hon’ble Supreme Court in the case of ***Meera Chauhan vs. Harsh Bishnoi and another, (2007) 12 SCC 201***, wherein it has been held that when parties violate order of injunction or stay order or act in violation of the said order, the court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.

31. On similar aspect, learned counsel referred to the decisions of different High Courts in the cases of ***Juvvaji Ravinder vs. Jakkula Pushpaleela, AIR 2024 Telangana 77*** (plaintiff is entitled to seek police assistance under Section 151



of the Code), *Sree Ram vs. State of UP and Ors.*, AIR 2011 Allahabad 72 (The Court is not only expected to pass order, but also to enforce the same) and *Papanna vs. Nagachari and Ors.*, AIR 1996 Karnataka 256 (The court can pass order to see that its order is enforced. Order 39 Rule 2A of the Code does not prevent the court from taking steps to implement its own order. The court has jurisdiction to order police protection in such circumstances).

32. On different facets of partition, learned counsel referred to some of the decisions of different High Courts. In the case of *Parmal Singh (dead) through LRs and others vs. Ghanshyam and Ors.*, AIR 2019 MP 131, the Division Bench of Madhya Pradesh High Court has held that it is well settled principle of law that unless and until the property is partitioned, the co-sharer can only sell to the extent of his share, but he cannot sell any specific portion of the land. In the case of *Jugal Kishore Singh and Ors. vs. Gobind Singh and Ors.*, 1992 (2) PLJR 35, the learned Single Judge Bench of this Court held that there is presumption of jointness and the burden to prove partition is on the person who asserts it. In the case of *Gajara Vishnu Gosavi vs. Prakash Nanasaheb Kamble and Ors.*, (2009) 10 SCC 654, the Hon'ble Supreme Court held that an



undivided share of a coparcener can be a subject matter of sale/transfer, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds, either by the decree of a court in a partition suit, or by settlement among the co-sharers. In the case of ***Vidyawati Gupta and Ors. vs. Bhakti Hari Nayak and Ors., AIR 2004 Calcutta 258***, the learned Single Judge has reiterated the view expressed by the Hon'ble Supreme Court in the case of ***Samir Sobhan Sanyal*** (supra) that if the court blinks at such unlawful action, due process of law would be put to ridicule in the estimate of the law abiding citizens and rule of law would remain a mortuary. In the case of ***Dorab Cawasji Warden vs. Coomi Sorab Warden and Ors., AIR 1990 SC 867***, the Hon'ble Supreme Court held that even if the family is divided in status in the sense that they were holding the property as tenants in common but undivided *qua* the property, i.e., the property had not been divided by metes and bounds, it would be within the provisions of Section 44 of the Act. It has further been held that denying an injunction against a transferee in such cases would *prima facie* cause irreparable injury to the other members of the family. In the case of ***Nizamuddin and Ors. vs. Khalil Mian and anr. (CWJC No. 10718/2014)***, the learned Single Judge of



this Court held that the law is well settled that the subject matter of the suit should be protected during the pendency of the litigation. In the case of **Mst.Manmati Kuer vs. Ramgopal Singh, AIR 1976 Patna 240**, the Division Bench of this Court held that disobedience of an order of injunction is a contempt of the Court. In the case of **Balwant Singh vs. Buta Ram, AIR 2009 (NOC) 2942 (P & H)**, the learned Single Judge of Punjab & Haryana High Court held that the principle of estoppel contained in Section 41, must yield to the doctrine of *lis pendens* contained in Section 52 of Transfer of Property Act, under which no title in the property can be validly transferred during the pendency of litigation, in respect of it. Thus the purchaser was not entitled to protection under Section 41 as the property was transferred in his favour during pendency of litigation.

33. The learned counsel next referred to the decision of the Hon'ble Supreme Court in the case of **Ramdas vs. Sitabai and Ors., (2009) 7 SCC 444**, wherein the Hon'ble Supreme Court held that there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject-matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and



through mutual settlement or by a decree of the court.

34. The learned counsel further referred to the decision of this Court in the case of ***Dular Chand Sah & Ors. vs. Devnath Sah & Ors., 2016 (1) PLJR 158***, wherein it has been observed that the person who is seeking injunction has to satisfy the Court three ingredients, namely *prima facie* case, balance of convenience and irreparable loss. If any of the ingredients is missing the Court would refuse to grant injunction.

35. The learned counsel further referred to the decision of the Hon'ble Supreme Court in the case of ***Ghanshyam Sarda vs. Sashikant Jha and Ors., (2017) 1 SCC 599***, wherein it has been held that law is well settled by the decision of the Court in ***DDA vs. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622***, that legal consequences of what has been done in breach of or in violation of the order of stay or injunction can be undone and the parties could be put back to the same position as they stood immediately prior to such order of stay or injunction.

36. The learned counsel further referred to the decision of this Court in the case of ***The State of Bihar vs. Usha Devi and another, AIR1956 Patna 455***, wherein it has been held that if a court comes to conclusion that an order passed under Order 39 Rule 1 or 2 have been disobeyed and by a contravention of



that order the other party in the suit has done something for its own advantage to the prejudice of the other party, it is open to the Court under inherent jurisdiction to bring back the party to a position where he originally stood as if the order passed by the court has not been contravened. The exercise of this inherent power vested in the court is based on the principle that no party can be allowed to take advantage of his own wrong in spite of the order to the contrary passed by the Court.

37. The learned counsel also referred to the decision of this Court in the case of ***Smt. Indrawati Devi vs. Bulu Ghosh and Ors., AIR 1990 Patna 1***, wherein it has been held that the petitioner must first comply with the mandatory injunction issued against him and should not take advantage of his own illegal acts.

38. The learned counsel next referred to the decision of Orissa High Court in the case of ***Baishnab Pradhan and Ors. vs. Guru Charan Pradhan, AIR 2003 Orissa 73***, on the point that it is the duty of the Court to exercise its power under inherent jurisdiction to bring back the parties to the position where they originally stood as if the order passed by the Court had not been contravened.

39. The learned counsel further referred to the decision



of this Court in the case of ***Shri Subodh Gopal Bose vs. Dalmia Jain & Co. Ltd. & Ors., AIR (38) 1951 Patna 266***, wherein it has been held that the party against whom an order of injunction is made cannot disregard the order on the ground that it is erroneous in any particular. Right or wrong, the injunction order binds him, and he disregards it at his peril.

40. The learned counsel next referred to the decision of Full Bench of Madras High Court in the case of ***Vidya Charan Shukla vs. Tamil Nadu Olympic Association and another, AIR 1991 Madras 323***, wherein it has been held that the Court, in exercise of its inherent power, can pass such order for the ends of justice as would undo wrong done to the aggrieved party. Where in violation of order of injunction, something has been done in disobedience, it will be the duty of the Court to set the wrong right and not to allow the perpetuation of the wrong doing. Lastly, it has been held that if it is found that the party had the knowledge of the order of the Court, then the Court shall not be powerless and may direct any person, who may be found to have stood in the way of implementation of the order, to remove the construction/obstruction and restore status quo ante, besides any effective action may be taken in criminal contempt.



41. On concurrent finding of fact, the learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***S.P. Deshmukh vs. Shah Nihal Chand Waghajibhai Gujarati, (1977) 3 SCC 515***, wherein the Hon'ble Supreme Court held that concurrent finding of fact cannot be interfered with in exercise of the writ jurisdiction.

42. The learned counsel further referred to the decision of this Court in the case of ***Arun Kumar Jha vs. Pushpa Choudhary & Ors., 2013 (4) PLJR 760***, wherein it has been held that if the orders have been passed after taking into account in detail the pleadings of the respective parties, the correctness of such order cannot be gone into by this Court in a proceeding under Article 227 like an Appellate Court. The Court can interfere with such orders only if it is found that exercise of jurisdiction or discretion is patently illegal and grossly unjust.

43. The learned counsel further referred to the decision of the Hon'ble Supreme Court in the case of ***Kesharlal H. Pardeshi vs. Vithal S. Patole (Dead) by LRs., (2005) 10 SCC 249***, wherein it has been held that the High Court in exercise of its jurisdiction under Article 227 of the Constitution ought not to have interfered with the findings arrived at by the two courts below. On similar proposition of law, the learned counsel



referred to the decisions of the Hon'ble Supreme Court in the cases of *Illoth Valappil Ambunhi vs. Kunhambu Karanavan*, (2020) 18 SCC 317, *Mani Nariman Daruwala and Ors. vs. Phiroz N. Bhatena and Ors.*, AIR 1991 SC 1494, *D.N. Banerji vs. P. R. Mukherjee*, AIR 1958 SC 58, *M/s Atlas Cycle (Haryana) Limited vs. Kitab Singh*, AIR 2013 SC 1172, *Waryam Singh and anr. vs. Amarnath and anr.*, AIR 1954 SC 215, *Keshar Bai vs. Chhunulal*, (2014) 11 SCC 438, *H.B. Gandhi & Ors. vs. M/s Gopi Nath & Sons and Ors.*, 1992 Supp (2) SCC 312, *Hamida and Ors. vs. Md. Kahlil*, AIR 2001 SC 2282, *Nibaran Chandra Bag vs. Mahendra Nath Ghunghu*, AIR 1963 SC 1895 and *Shabbir and another vs. Ashfaq Ahmad and another*, AIR 1988 Allahabad 223.

44. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

45. Though lengthy submissions have been made on behalf of the parties and voluminous materials in the form of authorities have been placed for consideration of this Court, but the issue involved in the present *lis* is confined within a narrow compass. The question before this Court is whether the learned subordinate courts exceeded their jurisdiction in passing the impugned orders directing the petitioner to remove the structure



from her purchased land which is part of the suit property and other consequential orders for removal of structure and putting the land to the same position as existing prior to the construction made by the petitioner after purchase, by passing the direction to the administrative authorities. Therefore, before referring to the authorities and rulings cited on behalf of the parties, it would be beneficial to recapitulate the facts of the case.

46. The genesis of the present case is the institution of Title Partition Suit No. 531/2013 by the respondent no.1 against his co-sharers. The suit land is about 14 acres for which partition has been sought. As per the statement of respondent no.1 in his partition suit, the respondent nos. 4 & 5, who are brothers of respondent no.1, are entitled to 1/12th share in the suit property of 14 acres. It further transpires that *ex-parte* injunction order came to be passed on 06.02.2016. The defendant nos. 3 & 4/respondent nos. 4 & 5 appeared in the suit on 23.09.2019 & 01.10.2019, respectively. During pendency of the suit, the respondent nos. 4 & 5 executed two registered sale deeds dated 01.03.2017 and 22.11.2017 in favour of the petitioner for 16.88 decimals of land appertaining to *Khata* No. 152, Plot No. 360 of village- Paiga, P.S.-Barhara, District-Bhojpur and the area of plot is about 76 decimals. The petitioner



claims to have constructed the house and shops on her purchased land prior to 01.05.2019. Now the petitioner was added as a party vide order dated 16.07.2019 and the learned trial court passed further order for maintaining *status quo* and to stop the construction on 14.11.2019.

47. Though it has been strenuously argued on behalf of respondent no.1 that the petitioner was having knowledge of the pendency of the partition suit as well as the injunction order over the suit property, the material placed on record does not lead to any such inference. Admittedly, the petitioner filed *vakalatnama* in Title Partition Suit No.531/2013 on 07.05.2019 and also filed petitions on 07.05.2019, 10.05.2019 and 13.05.2019, which were disposed of on 20.05.2019.

48. It is claimed by the respondent no.1 that in a proceeding before the administrative authorities under Sections 144 as well as 181 Cr.P.C., there has been submission on part of the petitioner which shows the petitioner was having knowledge, but the record does not help the Court to record any unequivocal findings in this regard.

49. Moreover, this Court in a proceeding under Article 227 of the Constitution of India would not like to venture into the disputed question of facts, which is better left to be decided



by the learned subordinate courts. At the same time, the facts need to be assessed in the light of the order of learned Sub Judge-8, Bhojpur dated 20.05.2019 in Title Partition Suit No. 531/2013 whereby and whereunder the learned trial court specifically ordered, in respect of the petitioner, making it clear that the order dated 01.05.2019 directing the parties to maintain *status quo* would not be effective against the petitioner. By the order dated 01.05.2019, the parties were directed to maintain *status quo* with regard to disputed land and further order was passed for stopping the construction work. The respondent no.1 has filed his suit against the petitioner vide Title Suit No. 703/2018 and the learned Sub Judge-7, Bhojpur dismissed the application filed by the plaintiff/respondent no.1 seeking injunction over the suit property. Therefore, from the material available on record, at this stage, it is not possible to infer with certainty that the petitioner was aware about the injunction order and she deliberately and willfully violated the same.

50. When an application is filed under Order 39 Rule 2A of the Code, then under Rule 459 of the Civil Court Rules of High Court of Judicature at Patna, a miscellaneous judicial case is to be instituted. If the manner of doing a particular act is prescribed under any statute, the act must be done in that



manner or not at all. In this regard, a reference could be made to the decision of the Hon'ble Supreme Court in the case of ***Meera Sahni vs. Lieutenant Governor of Delhi and Ors., (2008) 9 SCC 177***. It would be relevant to quote paragraph 35 of the said decision :

“35. It is by now a certain law that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed and in no other manner. In this connection we may appropriately refer to the decision of this Court in Babu Verghese v. Bar Council of Kerala [(1999) 3 SCC 422] wherein it was held as under : (SCC pp. 432-33, paras 31-32)

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor [(1875) 1 Ch D 426] which was followed by Lord Roche in Nazir Ahmad v. King Emperor [(1936) 63 IA 372 : AIR 1936 PC 253 (2)] who stated as under : (IA pp. 381-82)

‘where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.’

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindh Pradesh, AIR 1954 SC 322 and again in Deep Chand v. State of Rajasthan AIR 1961 SC



1527. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh AIR 1964 SC 358 and the rule laid down in Nazir Ahmad case (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law”.

51. But surprisingly the learned trial court did not consider this aspect of the matter and without making any inquiry went on to pass orders holding the petitioner guilty of violating the injunction orders. More surprisingly, the learned appellate court in Misc. Appeal No.37/2022 did not find any irregularity in not instituting the miscellaneous judicial case by the learned trial court. The learned appellate court took the stand on grandiose notion of upholding the dignity and majesty of the rule of law and to put such person in place who shows scant respect for the rule of law. Though the intent of subordinate courts may be pious and praiseworthy, still the courts could only act within the four corners of law and could not bypass the procedure established by law and short-circuit the proceedings. If a miscellaneous judicial case has to be instituted, the subordinate courts could have proceeded in the matter after institution of the same and not otherwise. In this regard, a reference could be made to the decision of the Hon’ble Supreme



Court in the case of ***K.Valarmathi v. Kumaresan, 2025 SCC OnLine SC 985***, wherein it has been held in paragraph 12 as under :

“Procedural law provides the necessary legal infrastructure on which edifice of rule of law is built. Short-circuiting of procedure to reach hasty outcomes is an undesirable propensity of an overburdened judiciary. Such impulses rendering procedural safeguards and substantive rights otiose, subvert certainty and consistency in law and need to be discouraged”.

52. It has been submitted on behalf of the respondent no.1 that the courts below proceeded in the matter not under Order 39 Rule 2A of the Code but under Section 151 of the Code. I think this argument is misconceived. The application has been filed under Order 39 Rule 2A of the Code by the respondent no.1, even submission was made before the learned trial court that in the light of the Order 39 Rule 2A of the Code, the vendors and vendee be punished to keep them in civil prison for three months and after attaching disputed land, it should be converted into a vacant land. Nowhere, the learned trial court mentioned that it was passing the order under Section 151 of the Code and not even the appellate court proceeded in the matter against the order passed on an application under Order 39 Rule



2A of the Code specifically mentioning this fact. Moreover, when there is specific provision to deal with the matter under Order 39 Rule 2A, there could be no application of Section 151 of the Code.

53. Now, Order 39 Rule 2A of the Code reads as under:

“2A. Consequence of disobedience or breach of injunction.-

(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto”.

54. Therefore, for violation of an injunction order, a person can be punished by keeping him/her in civil prison for



three months and by attaching of his/her property extendable up to one year. Hence, passing an order whereby and whereunder the petitioner has been directed to demolish the construction made by her under the provisions of Order 39 Rule 2A of the Code is simply not permissible.

55. Another glaring mistake committed by the learned trial court in passing the impugned order dated 27.05.2022 is that the said order was passed without hearing the petitioner, who has to ultimately bear the brunt of the order. It is the settled principle of law that no person should be condemned unheard. But this principle was given a complete go-bye by the learned trial court and the learned appellate court also failed to take notice of this fact.

56. When no notice was given to the petitioner before passing of injunction order, initiation of a proceeding against the petitioner under Order 39 Rule 2A of the Code is highly irregular and not sustainable. If the petitioner was having no notice of the injunction order operating against the land she purchased, directing her to take drastic measures like demolition the structures erected by her without giving an opportunity of hearing is not only illegal but also against commonsense. If the learned subordinate courts felt that the petitioner was having



knowledge all along about the injunction order and despite the injunction order, she continued the construction and flouted the orders passed for maintaining *status quo*, the court should have given an opportunity to the petitioner to dispel the contention raised by respondent no.1 and the learned subordinate courts were further required to record their findings in no uncertain terms about knowledge of the petitioner and her willful conduct. But the same required a detailed inquiry, which was never conducted and showing undue haste, the learned subordinate courts, perhaps, got swayed by the emotional appeal of respondent no.1, a learned Advocate himself.

57. Though the petitioner was given a hearing at the appellate stage, but as held by the Hon'ble Supreme Court in the case of ***Tilak Chand Magatram Obhan*** (supra) that a subsequent hearing cannot cure the defect of absence of hearing for the petitioner before the learned trial court which passed the first order on a petition filed under Order 39 Rule 2A of the Code.

58. Another omission not taken note of by the learned subordinate courts is that the petitioner was proceeded for violation of the injunction order dated 06.02.2016 when she was not even a party. So where was the occasion for the learned



subordinate courts to expect compliance of an order for which there was no notice to the petitioner. Much stress has been put by the learned counsel for the respondent no.1 that vide order dated 14.11.2019, the learned trial court has made it clear that the petitioner would also come under the purview of orders dated 06.02.2016 and 01.05.2019. But when the petitioner has been taken out of ambit of order dated 01.05.2019 and she was not a party to the order dated 06.02.2016, then without recalling the order dated 20.05.2019, it is beyond comprehension that by order dated 14.11.2019, the previous order has been made applicable against the petitioner. Retrospective application of injunction order against a person who has subsequently become party in the suit is unheard of and simply impermissible and it appears the learned trial court did not for a moment think over the implication of its own orders.

59. The respondent no.1 has repeatedly claimed that the petitioner was in knowledge of things from the very beginning and even her sale deed was void as executed against the specific injunction orders being *lis pendens* purchase, unless it is proved that the petitioner was having knowledge, it cannot be said that she acted in disobedience of the orders of injunction passed by the learned trial court and for the same a proper



inquiry is required to be conducted and she could not be held guilty in summary manner.

60. It has also been contended by the learned counsel for the respondent no.1 that this Court should not disturb the concurrent findings of two courts in exercise of its power under Article 227 of the Constitution of India. But when this Court finds that the exercise of jurisdiction or discretion is perverse, patently illegal and grossly unjust, there is no hindrance in exercising the power under Article 227 of the Constitution of India.

61. Another aspect of the matter, though not directly in issue the present matter, yet which needs to be taken note of, is that the respondent nos. 4 & 5, who are brothers of respondent no.1, who sold the suit property during the pendency of the partition suit, have nowhere been taken to task by both the subordinate courts. They are the first culprits if they executed the sale deeds knowing about the same in violation of the injunction orders. Still, no action has been taken against them and it shows the respondent no.1 is not interested in punishing the primary culprits and perhaps has taken a lenient view for the reason that they are his brothers. The whole effort of respondent no.1 appears to be towards penalizing the petitioner who was



not made party till 2019 in Title Suit No. 531/2013.

62. The plethora of authorities cited by the learned counsel for the respondent no.1 would have helped the cause of respondent no.1, if there were no dispute about the knowledge of the petitioner and there were further finding that she has been deliberately and willfully disobeyed the orders of the court without thinking of consequences. But in the light of the discussion made hereinbefore, I am of the considered view that the authorities cited by the respondent no.1 are distinguishable on facts of the case and could not have any application in the present case.

63. It is apposite to refer the Constitution Bench decision of the Hon'ble Supreme Court in the case of ***State of Orissa vs. Sudhansu Sekhar Misra and Ors., AIR 1968 SC 647***, wherein the Hon'ble Supreme Court held that a decision is only an authority for what it actually decides and further held that what is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The Hon'ble Supreme Court quoted Halsbury LC in ***Quinn vs. Leathem, 1901 AC 495***.

“Now before discussing the case of Allen v. Flood, (1898) AC 1 and what was decided therein, there are two observations of a



general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all”.

64. Therefore, in the light of the discussion made hereinbefore, I am of the considered opinion that the learned appellate court as well as learned trial court committed gross error of jurisdiction while passing the orders dated 16.12.2023 and 27.05.2022. Hence, both the impugned orders could not be sustained and the same are set aside.

65. Accordingly, present petition stands allowed.

66. However, it is made clear that anything said or observed here is only for the purpose of the disposal of the



present petition and would not cause prejudice to the case of the parties.

67. Pending interlocutory application, if any, also stands disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
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