

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.972 of 2019**

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Raj Kumar Bharatiya S/o Late Chiranjilal Bharatiya R/o M.G. Road, P.O. and
P.S.-Triveniganj, Distt-Supaul

... .. Petitioner/s

Versus

1. Feku Prasad Yadav Son of Late Naseeblal Yadav R/o Vill, P.O. and P.S.-
Triveniganj, Distt-Supaul
2. Pallav Kumar Agarwal S/o Rajkumar Agarwal R/o Triveniganj Bazar, P.O.
and P.S.-Triveniganj, Distt-Supaul
3. Smt. Kiran Devi W/o Rajkumar Agarwal R/o Triveniganj Bazar, P.O. and
P.S.-Triveniganj, Distt-Supaul
4. Binay Kumar Bharatiya S/o Late Ram Bilash Bharatiya R/o Triveniganj
Bazar, P.O. and P.S.-Triveniganj, Distt-Supaul
5. Keshav Kumar Bharatiya S/o Late Ram Bilash Bharatiya R/o Triveniganj
Bazar, P.O. and P.S.-Triveniganj, Distt-Supaul
6. Hemant Kumar Bharatiya S/o Late Ram Bilash Bharatiya R/o Triveniganj
Bazar, P.O. and P.S.-Triveniganj, Distt-Supaul
7. Most. Sharda Devi W/o Late Ram Bilash Bharatiya R/o Triveniganj Bazar,
P.O. and P.S.-Triveniganj, Distt-Supaul

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anshu Raj Singh, Advocate Mr. Parth Gaurav, Advocate Ms. Shambhavi Shankar, Advocate
For the Respondent/s	:	Mr. Sadashiv Tiwari, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 27-06-2025

Heard the learned counsels for the parties and I intend
to dispose of the present petition at the stage of admission itself.

02. The petitioners has challenged the order dated
25.05.2017 passed by the learned Sub Judge-I, Supaul in Title
Suti No. 205 of 2014 whereby the application dated 08.07.2014
filed on behalf the plaintiff under Order XXXIX Rule 1 & 2 of



the Code of Civil Procedure (for short 'the Code') has been rejected. Further challenge is to the order dated 05.03.2019 passed by the learned Additional District Judge-I, Supaul whereby the miscellaneous appeal filed by the plaintiff/appellant under Order XLIII Rule 1(r) of the Code challenging the order dated 25.05.2017 passed by the learned Sub Judge in Title Suit No. 205 of 2014 has been rejected.

03. Learned counsel for the petitioner submits that Title Suit No. 205 of 2014 was filed by the plaintiff/petitioner for declaration of right title and possession over the land mentioned in Schedule-2 of the plaint. Further declaration was sought for possession of the plaintiff over 11 *katha* 09 *dhur* and 10 *dhurki* of land mentioned in Scheduled-2 of the suit property excluding 02 *dhurs* of land from the North-Eastern portion over which the defendant no. 1 is in possession and also for recovery of possession over the said 02 *dhurs* of land. Apart from that the plaintiff prays for setting aside the sale deeds dated 04.12.2012, 26.12.2012, 24.03.2013, 30.08.2013 executed in favour of the defendant no. 1, sale deed dated 04.12.2012 executed in favour of defendant no. 2 and sale deeds dated 26.12.2012 and 24.03.2013 executed in favour of defendant no. 3. Learned counsel further submits that there had been a partition in the



family of the plaintiff in which separate shares were allotted in the name of father of the plaintiff and his uncles. The said partition took place on 16.12.1974. Learned counsel further submits that one Parameshwar Lal Bharatiya was one of the ancestors of the parties, who was having two sons Ram Bilash Bharatiya and Chunni Lal Bharatiya and defendant/respondent nos. 4, 5 and 6 are sons of Ram Bilash Bharatiya. Parameshwar Bharatiya got the land of new *Khesra* No. 10835. Subsequently, father of the plaintiff and his three sons came into possession over 03 *bighas* 09 *katha* and 17 *dhurs* of land of new *Khesra* No. 10853 (old *Khesra* No. 6560). Thereafter, in the year 1981-82, another partition took place between the father and brothers of plaintiff. Subsequently, property mentioned in Schedule-I of the plaint was allotted in the share of plaintiff and the plaintiff came into peaceful possession over the said land and got his name mutated over the same. After this partition, when the plaintiff was out of station, the defendants 3rd and 4th set, in collusion with the local authorities, got a 10 feet soling road constructed from the main road up to the plot of the plaintiff in the northern side of his plot due to which area of plaintiff was reduced by 1 *katha* 04 *dhurs* and his plot got separated in two parts but the same was compensated from the land adjacent to



the plaintiff which was in the share of the father of the plaintiff. Thereafter, the defendants 3rd and 4th set executed some sale deeds and defendant no. 1 deliberately, by use of force, took possession over 02 *dhurs* of land.

04. Learned counsel further submits that in the title suit, the defendants appeared and filed their written statement and during pendency of the suit, started construction over the part of the disputed land, then the plaintiff filed application under Order XXXIX Rule 1 and 2 of the Code on the ground that defendant no. 1 is making construction over the part of disputed land which would change the nature of the suit property. In the rejoinder, defendant nos. 1, 4, 5 and 7 denied about making any kind of construction over any portion of the suit property. Thereafter, on the application of the plaintiff, the court ordered for appointment of the Advocate Commissioner who went on the spot and submitted detailed report contending that the construction is going on over the part of the disputed land. However, the learned trial court rejected the application of the plaintiff vide order 25.05.2017. The said order was challenged by the plaintiff by filing Misc. Appeal No. 03 of 2017, which was also dismissed vide order dated 05.03.2019. Both these orders are under challenge before this Court.



05. Learned counsel further submits that while rejecting the application of the plaintiff, the learned trial court held that there was no *prima facie* case or balance of convenience in favour of the plaintiff and no loss will be caused to the plaintiff, if injunction was not granted. However, the learned trial court failed to appreciate that mutation is in the name of the plaintiff and from the report of the learned Advocate Commissioner, it was clear that some construction was going on over the part of the disputed land, resulting in change of the nature of the suit property. Learned trial court further failed to appreciate that even the rent receipt with respect to the land in dispute has been issued by the revenue office in the name of the plaintiff. Learned counsel further submits that both the courts failed to appreciate that the application for injunction was with respect to complete suit property and not restricted to area of 02 *dhurs*. The defendants are in negotiation with the person of the locality to sale the disputed plots which would unnecessarily create third party interest and would increase complexity in the suit. Learned counsel further submits that defendants were sold the suit property, who acquired no right and title over the suit property as the sale deeds executed by the vendors, without any right and title over the suit property,



are null and void. If the defendants are not stopped from changing the nature of the suit property, the same would cause serious prejudice to the plaintiff and would result in irreparable loss to the plaintiff, as the plaintiff is having right and title over the suit property and mutation also exists in his name and rent receipts are being issued to him. The suit filed by the plaintiff raises some triable issues and for this reason, *prima facie* case is in favour of the plaintiff. If injunction is not granted, the petitioner/plaintiff would suffer irreparable loss/injury and therefore, balance of convenience lies in favour of the plaintiff. Hence, the orders passed by the learned subordinate courts are not sustainable and the same need to be set aside.

06. Learned counsel appearing on behalf of the respondents vehemently contends that there is no infirmity in the impugned orders and the same do not need any interference by this Court. Learned counsel further submits that the plaintiff/petitioner has challenged the concurrent findings of two courts on his application filed under Order XXXIX Rules 1 and 2 of the Code and this Court is not supposed to disturb the concurrent findings of courts below in its supervisory jurisdiction under Article 227 of the Constitution of India. Learned counsel further submits that Parameshwar Lal



Bharatiya got 04 *Bigha* 07 *katha* 06 *dhurs* land of old *Khesra* No. 6560 in suit land from ex-landlord. Parameshwar Lal Bharatiya partitioned the said property and gave 01 *Bigha* 03 *katha* 13 *dhurs* each to his two sons and retained 02 *Bigha* himself. Though the sons sold their lands, Parameshwar Lal Bharatiya did not sell his land and after his death his two sons came into possession of 01 *Bigha* each. Out of this land, the defendants sold the suit land to defendant/respondent no.1. Thus, the defendants are in possession and this fact has been admitted by the plaintiff and for this reason, no *prima facie* case is made out for injunction. The mutation has also been done in the name of the defendants and they have been coming into title and possession over the suit property. The defendant no. 1 purchased 10 *katha* land and out of this 10 *katha*, 02 *katha* each from Chunnilal Bharatiya, Vinay Kumar Bharatiya and Hemant Kumar Bharatiya and 04 *katha* from Keshav Kumar Bharatiya. The defendant no. 1 has constructed his house over 2 and $\frac{1}{2}$ *katha* land and also constructed a boundary wall over the same. This fact is also confirmed from the report of learned Advocate Commissioner who observed that an old boundary wall has been existing on the suit property along with an iron gate. Both the subordinate courts have considered the facts of the case and



finding neither any *prima facie* case nor any balance of convenience in favour of the plaintiff and also observing that no irreparable loss was going to be caused to the plaintiff, rightly rejected his prayer for injunction. Therefore, the orders of the learned subordinate courts need no interference by this Court.

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

08. Evidently, concurrent findings of two courts on point of injunction have been assailed before this Court in the present petition. Normally, the High Courts does not interfere with concurrent findings of fact made by two subordinate courts unless those findings are deemed perverse or based on an error of law. This principle is rooted in the idea that appellate courts should not lightly interfere with the decisions of lower courts, especially when those lower courts have reached the same conclusion based on the evidence presented.

09. The Hon'ble Supreme Court in the case of *Prakash Harishchandra Muranjan Vs. Mumbai Metropolitan Region Development Authority and Another*, reported in (2009) 3 SCC 432, declined to interfere when prayer for injunction was concurrently refused by two courts and held that it could take a different view only if the judgment of the court



below was found to be perverse. Thus, only exception is perversity or apparent illegality in the impugned orders on the face of record. In the impugned order, I do not find any such perversity or outright illegality. The plaintiff/petitioner claimed title and possession over the suit property but at the same time, he has admitted the possession of defendant no. 1 over certain portion of the land. The other defendants are the co-sharers though there may be varying claim about the shares of different branches and their possession. But, these are matters to be thrashed out at the stage of trial and could not be gone into at the stage while considering injunction application. If claim is based on partition of joint family property and there is rival claim about allocation of share, merely because the plaintiff has filed a case does not mean that he is having a *prima facie* case when, admittedly, the defendants are in possession over the certain portion of suit land. Further, when it has come in the report of the learned Advocate Commissioner about already existing boundary wall and gate, making a submission in the injunction application about defendant constructing a boundary wall is not a correct averment. If the defendant no. 1 is in possession, his possession could not be lightly interfered with by granting injunction.



10. Therefore, in the light of discussion made here-in-before, I am of the considered opinion that the learned subordinate courts have rightly proceeded in the matter and there appears no error of jurisdiction while passing the impugned orders dated 25.05.2017 and 05.03.2019 and hence, the same are affirmed.

11. Accordingly, the present petition stands dismissed.

12. Since the title suit is pending since 2014, i.e., more than 10 years have elapsed, the learned trial court is directed to expedite the trial and try to conclude the same at the earliest, without granting unnecessary adjournment to either of the parties. It is expected that the parties will not seek unnecessary adjournments and will co-operate towards disposal of the case.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.07.2025
Transmission Date	NA

