

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.526 of 2025

Hare Ram Jha, Son of Late Rashik Lal Jha Resident of Village-Belari, P.O. - Belari, P.S.-Shambhuganj, District-Banka.

... .. Petitioner/s

Versus

1. Nitin Kumar Jha, Son of Hare Krishna Jha Resident of Village-Belari, P.O.- Belari, P.S.-Shambhuganj, District-Banka.
2. Dhananjay Jha Son of Hari Krishan Jha Resident of Village-Belari, P.O.- Belari, P.S.-Shambhuganj, District-Banka.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhirendra Kumar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 30-04-2025 The record taken up on mentioning being made on behalf of the petitioner.

2. Heard learned counsel for the petitioner.

3. The petitioner is aggrieved by the order dated 28.01.2025 passed by the learned Munsif, Banka in Title Suit No. 06 of 2022 whereby and whereunder a petition dated 28.03.2022 filed by the plaintiffs under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code') has been allowed.

4. The learned counsel for the petitioner submits that the learned trial court allowed the injunction application without consideration of the material available on record and further restrained the defendant from interfering in flowing of dirty



water by the plaintiffs, but there is no such prayer to that effect in the application dated 28.03.2022 filed by the plaintiffs. The learned counsel further submits that earlier on an application dated 04.03.2023, the learned Munsif, vide order dated 26.05.2023, has rejected the prayer of the petitioner for directing the defendant not to disturb the plaintiffs in flowing the *Nala*. The learned counsel also submits that the discharge of the said drain is at the boundary of the defendant and the learned trial court did not even consider its earlier order and went on to pass the impugned order.

5. Be that as it may, the fact remains the impugned order has been passed on an application filed under Order 39 Rule 1 & 2 of the Code and apparently, against such order, only an appeal under Order 43 Rule 1 (r) of the Code would lie and the petitioner moving before this Court in extraordinary jurisdiction under Article 227 of the Constitution of India is misuse of the process of the Court. Since the impugned order is appealable, the petitioner ought to have approached the appellate court and should not have rushed before this Court.

6. Therefore, the present civil miscellaneous petition could not be entertained and the same is disposed of with liberty to the petitioner to approach the appellate court for redressal of



his grievance.

(Arun Kumar Jha, J)

V.K.Pandey/-

U			
---	--	--	--

