

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.341 of 2023

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Nandlal Yadav Son of Late Sita Ram Mandal @ Seetaram Yadav, Resident of Mauza Dumrail, Ward No.-34 (Old) presently New Ward No. -21 under Nagar Nigam, Saharsa, P.S.-Sadar, Saharsa, District-Saharsa.

... .. Appellant/s

Versus

1. The State of Bihar through Collector, Saharsa, District- Saharsa.
2. Executive Officer, Nagar Parishad (Municipal Corporation, Saharsa), District- Saharsa.
3. Ward Commissioner, Ward No. 34 (old) Nagar Parishad Saharsa, presently Ward No. 21, Municipal Corporation, Saharsa, P.S. and District- Saharsa.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajendra Narain, Sr. Advocate Mr. Umesh Kumar Roy, Advocate Ms. Anju Narain, Advocate
For the Respondent/s	:	Ms. Annapurna Sinha, Advocate Mr. Subhash Prasad Singh, GA-3

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date: 11-08-2025

Heard learned counsels for the parties.

2. This Miscellaneous Appeal has been preferred against part of the order dated 14.03.2023 passed by learned Sub-Judge-I, Saharsa (hereinafter referred to as “Trial Court”) in Title Suit No. 967 of 2022 wherein and whereby the injunction has not been granted by the learned Trial Court with respect to further construction of water tank and its related work on Schedule-2 land by the respondents. Both the parties have been directed by the learned Trial Court that except the land on which



the water tank was being constructed and work related to it was carried out (i.e. on Schedule-2 land), no further construction work would be carried out on the remaining portion of land till further order.

3. The Title Suit No.967 of 2022 was filed by the plaintiff/appellant on 07.12.2022 seeking declaration of title over the suit land of Schedule no. 1 (total land measuring 2 *bigha 7 kattha 14 dhur*) and Schedule no. 2 (containing 8 *kattha* of *Khesra* no. 374 on which water tank is being constructed which is a part of Schedule no. 1) and recovery of possession over land of Schedule no. 2 on removal of defendants' structure and for declaring the *Jamabandi* Cancellation Case as illegal.

4. The case of plaintiff/appellant is that his father namely Sita Ram Mandal came in possession of the suit land as owner on oral settlement by ex-landlord and used the land in manner he liked throughout his life and continued paying rent to the ex-landlord. The ex-landlord filed return in the name of Sita Ram Mandal treating him as *raiyyat* of the said land. On death of Sita Ram Mandal, the plaintiff/appellant along with his five brothers became owner of the said land and on mutual partition, the suit land came into the exclusive share of the plaintiff/appellant and it exclusively belongs to him. During



revisional survey, the plaintiff's suit land had wrongly been recorded in the *khata* of the Government of Bihar. Further, the Government Officials and the *Nagar Parishad* Officials started construction of water tank over the plaintiff's land (over 8 *kattha* of land of *Khata* No. 100 *Khesra* No. 374) and *Jamabandi* Cancellation Case No.131 of 2019 was initiated in the Court of Additional Collector, Saharsa wherein order dated 18.02.2020 was passed for cancellation of *Jamabandi* against which the plaintiff/appellant filed *Jamabandi* Cancellation Appeal No. 16 of 2021 in the Court of Collector, Saharsa which was set aside and remanded back to Additional Collector, Saharsa for fresh hearing who *vide* order dated 11.11.2022 passed an order for cancellation of *Jamabandi* in the name of the plaintiff/appellant and his father. Thereafter, considering no substantial relief in *Jamabandi* matter, the aforesaid suit was filed by the plaintiff/appellant. The injunction petition dated 23.12.2022 was filed by the plaintiff/appellant.

5. On hearing the parties and considering the documents on record and also considering the pleader commissioner's report, the learned Trial Court *vide* impugned order dated 14.03.2023 disposed of the said injunction petition dated 23.12.2022 of the plaintiff in favour of plaintiff as the



Court has to determine whether plaintiff has title on the land in question or not. On the point of balance of convenience, it was held that for 8 *kattha* of land on which the water tank was being constructed, the plaintiff had no possession and the balance of convenience leans in favour of the defendant and not in favour of plaintiff/appellant. However, for remaining land, the balance of convenience is in favour of the plaintiff. It is further held that the water tank which is about to complete has been constructed with expenses for the benefit of general public and any hindrance in the construction thereto would cause irreparable loss to the defendants/respondents. Accordingly, the learned Trial Court held that the construction of water tank on the Schedule 2 land would not be stopped. However, the learned Trial Court, on consent, directed the parties not to carry out any further construction work on remaining land till further order.

6. Learned counsel for the appellant/plaintiff has submitted that the learned Trial Court, having accepted the fact that the *prima facie* case is in the favour of the appellant/plaintiff, passed erroneous order in denying injunction against construction of water tank and its related work on Schedule-2 land. Learned Trial Court failed to appreciate that the construction work was in initial stage when the suit was filed



and the defendants illegally continued construction work. It is further submitted that neither the appellant/plaintiff nor his lawyer had given any consent as noted in the impugned order which was required to be corrected by the learned Trial Court.

7. Per contra, learned counsel for the respondents submitted that learned Additional Collector, Saharsa has rightly held in *Jamabandi* Cancellation Case No. 131 of 2019 that the suit land involved therein belongs to *Gair Majarua Khas Khata* and the *Jamabandi* was created without any documentary proof. The *Jamabandi* was rightly cancelled *vide* order dated 18.02.2020 after spot verification and on merit. It is further submitted that the appellant has no *prima facie* case for injunction as it has been admitted by the appellant that he is not in possession of the aforesaid land. Also, the learned Trial Court has rightly held that the balance of convenience with respect to Schedule-2 land is in favour of the defendants/respondents and also irreparable loss would be caused to the defendants in granting injunction against the further construction of water tank for the public. He further submitted that when the petition had been decided on merit, then consent of the parties has no significance. Thus, there is no merit in this Miscellaneous Appeal and it is liable to be set aside.



8. Having heard the learned counsel for the parties and on perusal of materials available on record, the only point of determination by this Court in this appeal is “*whether the part of impugned order dated 14.03.2023 denying injunction against further construction of water tank and related work on Schedule-2 land requires any interference by this Court or not?*”

9. The law regarding grant of temporary injunction and interlocutory order is covered by Order 39 of the CPC. It is now well settled that before a Court grants a temporary injunction, it needs to be satisfied that a person seeking an injunction has a *prima facie* case in his favour and that balance of convenience and irreparable injury also lies in his favour.

10. The Hon’ble Supreme Court in **Kishoresinh Ratansinh Jadeja v. Maruti Corpn.** reported in (2009) 11 SCC 229 and **Hazrat Surat Shah Urdu Education Society v. Abdul Saheb** reported in 1988 (4) Judgments Today 232;MANU/SC/0651/ 1988 held that it is well established that while passing an interim order of injunction under order 39 Rules 1 and 2 CPC, the Court is required to consider:

- (i) *whether there is a prima facie case in favour of the plaintiff;*
- (ii) *whether the balance of convenience is in favour of passing the order of injunction; and*
- (iii) *whether the plaintiff will suffer irreparable injury if an order of injunction would not be passed*



as prayed for.

11. The word '*prima facie* case' apparently indicates something which at first impression makes out a triable case. The term '*prima facie* case' should not be confused with the term '*prima facie* title' which has to be established at the trial upon permitting the parties to lead evidence. Thus, it means a substantial question which has been raised and which upon first sight needs to be investigated and decided on merits.

12. The word 'balance of convenience' denotes that the court must be satisfied that the comparative mischief and hardship which is likely to be caused to the person seeking injunction is more than the inconvenience likely to be caused to the other party by granting such injunction.

13. The word 'irreparable injury' guides the court to be satisfied that the refusal to grant injunction would result in such injury which cannot be compensated in term of costs or otherwise and the person seeking injunction needs to be protected from the consequences of apprehended injury.

14. While dealing with aforesaid three ingredients, the court must refrain from holding a mini trial. The court should make an endeavor to test the relevant pleadings in the light of the principles as noted above and if it finds that there is



a contestable issue which requires evidence of the parties to be decided and balance of convenience and irreparable injury is in favour of the party seeking the injunction then the status be preserved, as at the initial stage the rights of the parties are in an inchoate stage. The court would require the evidence to determine the rights of the parties which can only be crystallized after trial and can enable the court to form a definite opinion whether the plaintiff has a reason strong enough to enable the court to pass a decree in his favour and if not, the suit is required to be dismissed.

15. Considerations of equity and interests of justice would justify preservation of *status quo* in respect of corpus of the dispute. This is simply because, if ultimately, the case of the plaintiff is found to be without merit, the defendant could deal with property as it chooses and also be adequately re-compensated for the prejudice, if any, which has been caused by its inability to do so in the *interregnum* whereas, if the status of the property, whether in respect of title or possession, alters during the pendency of *lis*, the resultant prejudice to the plaintiff might be irremediable. Principles of balance of convenience too, therefore, normally justify maintenance of the *status quo* during the pendency of the litigation.



16. In the case of **Esha Ekta Apartments Ltd. v. Municipal Corporation of Mumbai** reported in **(2021) 4 SCC 689**, the Hon'ble Supreme Court considered the scope of interference by the Appellate Court in interim order passed by the Court at the first instance. The Appellate Court's power to interfere with the interim order passed by the Court of first instance has been considered by the Hon'ble Apex Court in several cases.

17. The Apex Court in **Wander Ltd. v. Antox India (P) Ltd.** reported in **1990 Supp SCC 727** had the occasion to consider the principles regarding grants of injunction wherein the Apex Court made the observation that in such appeals, the Appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that Appellate Court would have been taken a different view may not justify interference with the Trial Court's exercise of discretion. This case was referred in



Skyline Education Institute (India) Pvt. Ltd. v. S.L. Vaswani

reported in **(2010) 2 SCC 142**, wherein the three-Judge Bench of Hon'ble Supreme Court observed that:

“The ratio of the abovenoted Judgment is that once the Court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the Appellate Court will be loath to interfere simply because on a de novo consideration of the matter it is possible opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.”

18. In the present case, the respondents who are in active possession of Schedule-2 land having undertaken substantial construction of a water tank on the same as a part of public utility project, involving significant expenditure from public funds and non-completion of the same would adversely affect the larger public interest.

19. Taking note of the law settled and the judgment of the Hon'ble Supreme Court as discussed above, it is pertinent to mention here that though the appellant has been able to make out a *prima facie* case in his favour, the relief of injunction is nevertheless discretionary and must also satisfy the twin tests of balance of convenience and irreparable injury. However, as per



the averments made by the respondents, the structure of the water tank has substantially been completed and if an injunction is granted against the respondents, it would result in the wastage of substantial public resources already invested in it. Such a loss cannot be adequately compensated in monetary terms and would cause serious prejudice to public welfare. Conversely, the appellant, being neither in possession nor holding a settled title, suffers no immediate or irreparable harm if the construction continues. Therefore, the potential injury to the respondents is not only irreparable but also extends beyond private interest to affect public utility, making the grant of injunction unjustified at this stage. The learned Trial Court has decided the injunction petition on merit and rightly held that necessary ingredients for grant of injunction are not present in favour of the plaintiff/appellant with respect to further construction of water tank and related work on Schedule-2 land.

20. In view thereof, due to lack of substantial grounds, it requires no interference in the order dated 14.03.2023 passed by the learned Trial Court in Title Suit No. 967 of 2022.

21. Resultantly, the instant Miscellaneous Appeal stands **dismissed**.



22. There shall be no order as to costs.

23. It is appropriate to direct the learned Trial Court to expedite the trial and no unnecessary adjournment be granted by the learned Trial Court to the either parties.

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
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