

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.538 of 2023

Mahendra Mishra Son of Late Ramashish Mishra Resident of Vilalge-Kanta,
Piraucha, P.S.-Gaighat, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. Sri Upendra Mishra Son of Late Bindeshwari Prasad Mishra Resident of Mohalla-Ramdayalu Lane, P.O.-Ramna, P.S.-Kazi Mohammadpur, Town, District-Muzaffarpur.
2. Most. Poonam Mishra W/o Late Indra Deo Mishra Resident of Village-Kanta, P.O.-Knata Piraucha, P.S.-Gaighat, District-Muzaffarpur.
3. Puja Anand D/o Late Indradeo Mishra Resident of Village-Kanta, P.O.-Knata Piraucha, P.S.-Gaighat, District-Muzaffarpur.
- 4.1. Sanjeev Kumar Singh @ Juganu S/o Late Santoshi Singh Resident of Village Dhanaur, P.O.- Dhanaur, P.S.- Katra, District- Muzaffarpur.
- 4.2. Shaswat S/o Sanjeev Kumar Singh @ Juganu Resident of Village Dhanaur, P.O.- Dhanaur, P.S.- Katra, District- Muzaffarpur.
- 4.3. Satya S/o Sanjeev Kumar Singh @ Juganu Resident of Village Dhanaur, P.O.- Dhanaur, P.S.- Katra, District- Muzaffarpur.
5. Pragya Anand D/o late Indradeo Mishra Resident of Village-Kanta, P.O.-Knata Piraucha, P.S.-Gaighat, District-Muzaffarpur.
6. Priya Anand D/o Late Indradeo Mishra Resident of Village-Kanta, P.O.-Knata Piraucha, P.S.-Gaighat, District-Muzaffarpur.
7. Prachi Anand D/o late Indradeo Mishra Resident of Village-Kanta, P.O.-Knata Piraucha, P.S.-Gaighat, District-Muzaffarpur.
8. Payal Anand D/o Late Indradeo Mishra Resident of Village-Kanta, P.O.-Knata Piraucha, P.S.-Gaighat, District-Muzaffarpur.
9. Sri Gajendra Mishra S/o Late Bindeshwari Prasad Resident of Village-Kanta, P.O.-Knata Piraucha, P.S.-Gaighat, District-Muzaffarpur.
10. Binda Devi D/o Late Bindeshwari Prasad Mishra Resident of Village-Kanta, P.O.-Knata Piraucha, P.S.-Gaighat, District-Muzaffarpur.
11. Ram Sagar Mishra, Son of late Jugeshwar Mishra, R/o Ramdayalu Lane, P.O. Ramna, P.S. Kazi Mohammadpur, Distt- Muzaffarpur.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr.Prabhakar Nath Rai, Advocate
Mr. Nagendra Rai, Advocate
For the Respondent/s : Mr.Sunil Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 22-05-2025

The present civil miscellaneous petition has been filed for setting aside the order dated 21.03.2023 passed by learned Additional District Judge-18, Muzaffarpur in Misc. Civil Appeal Case No. 06 of 2018 and also for setting aside the order dated 08.03.2018 passed by learned Sub Judge – 9, Muzaffarpur in Partition Suit No. 409 of 2018, whereby and whereunder the prayer for injunction sought by the petitioner was rejected.

2. Briefly stated, the facts of the case are that the petitioner is the plaintiff and has filed Partition Suit No. 409 of 2008 and the respondents are the defendants. The plaintiff/petitioner has filed the suit for partition seeking relief for preliminary decree to the extent of plaintiff's 1/4th share in the suit property of Schedule I of the plaintiff be passed in favour of the plaintiff with further prayer to carve out separate patti for the said 1/4th share apart from other reliefs. Further relief has been sought by the plaintiff for declaration that sale deed dated 26.12.1985 executed by Bindeshwari Prasad to respondent no. 1/defendant no. 2 was illegal, invalid, void *ab*



initio and not binding upon the plaintiff. The suit property comprises of 4 katha 10 dhurs land bearing C.S. Plot No. 567/836 and 568 appertaining to Khata No. 101 and 3 katha 18 dhurs bearing C.S. Plot No. 566 and 567 appertaining to C.S. Khata No. 134 situate in Mohalla – Ganipur, P.S. Mohammadpur in Muzaffarpur Town, District – Muzaffarpur. From these C.S. Plots R.S. Plot No. 807 Kha, 813 Ka, 813 Kha & 813 Ga, 814 Ka, 814 Kha, 814 Ga, 810 Ka, 810 Kha, 808, 811 Ka, 811 Kha & 811 Ga, 812 Ka, 812 Kha, 812 Ga & 809 Ka & 809 Kha have been carved out. The plaintiff and the defendants have a common ancestor in one Jugeshwar Mishra who had 4 sons Ramashish, Bindeshwari Prasad, Ram Sawarth and Ram Sagar. Plaintiff is the son of Ramashish and the defendants are descendants of Bindeshwari Prasad. The suit property originally belonged to Most. Koshalya Devi who had purchased it vide two registered sale deeds dated 18.12.1939 and 13.03.1940, respectively. Koshalya Devi died leaving behind 4 sons Bulkan, Chauki, Raghu and Cheta. Raghu and Cheta also died leaving behind 4 sons and 3 sons, respectively who stayed joint with their uncles. Bulkan, Chauki and all son of Raghu and Cheta sold Schedule I land by registered sale deed dated 19.10.1957 to all the 4 sons of Jugeshwar Mishra for a



consideration of Rs.6,951/- and put them in possession. The bricks built house was constructed with tiled roof from the joint family fund. The rooms on the road side were let out to tenants through Ram Sagar Mishra who was a Professor in R.D.S. College. Further, constructions were made, some for residential purpose and some for letting out as shop from joint family fund and to accommodate different family members as detailed in the complaints. However, no partition by metes and bounds took place. Therefore, the suit for partition was filed. The plaintiff further pleaded that Bindeshwari Prasad Mishra had executed a sale deed on 26.12.1985 with respect to 26.05 hectare of R.S. Plot Nos. 807 Ka & Kha in favour of respondent no. 1 which is illegal, invalid and void *ab initio*. Defendants 2 to 11 appeared and filed written statement and claimed that there had been previous partition by metes and bounds amongst the 4 sons of Jugeshwar Mishra for the suit property in 1968 and the parties are separate in possession. R.S. Khatian was also prepared separately. The private partition was oral but subsequently sketch map was prepared by Amin showing that the property was partitioned in six blocks as contained in the sketch map and the co-sharers were allotted the suit land in the following manner:-



- i. Ram Sawarth Mishra – Block 1+5= 10,565 Sq. link.
- ii. Bindeshwari Prasad Mishra – Block 2+6= 11,190 Sq. link.
- iii. Ramashish Mishra – Block 3= 6,875 Sq. link.
- iv. Ram Sagar Mishra – Block 4=7,125 Sq. link.

When the defendant nos. 2, 3 & 10, i.e., respondent nos. 1, 2 & 9 started to demolish old structures and started making new constructions, the plaintiff/petitioner filed an injunction petition on 09.08.2016 to restrain the defendant nos. 2, 3 & 10 from making any construction and changing the physical feature of R.S. Plot No. 813 Ka, Kha & Ga and R.S. Plot No. 814 Ka, Kha & Ga during pendency of the suit. A supplementary petition was also filed on 13.02.2017 along with photograph of the demolition. Further, averment was made in in the injunction petition dated 09.08.2016 that R.S. entries have been made at the behest of Bindeshwari Mishra and Ram Sagar Mishra who were managing members of the joint family. The defendants/respondents opposed the prayer of injunction setting plea of previous partition. The learned trial court heard the parties on the injunction matter and rejected the petition vide order dated 08.03.2018, though the learned Sub Judge found a prima facie case in favour of the plaintiff/petitioner. Being aggrieved by the said order, the petitioner filed Misc. Appeal



No. 06 of 2018 in the court of learned District Judge, Muzaffarpur. The respondents appeared in miscellaneous appeal and contested it. The learned appellate court heard the miscellaneous appeal and dismissed the same vide order dated 21.03.2023. Both the orders dated 08.03.2018 and 21.03.2023 are under challenge before this Court in the present civil miscellaneous petition.

3. Learned counsel for the petitioner submitted that the impugned orders are perverse and the findings of the learned subordinate courts are against the factual situation of the case. The learned subordinate courts ought to have considered that the plea of defendants/respondents is improbable and not believable. Even reliance played by the learned first appellate court on R.S. Khatiyani is not in accordance with law. Learned counsel further submitted that the learned subordinate courts have committed error of jurisdiction vested in them by the law. Learned counsel further submitted that the appellate court further failed to consider that the case of defendants of previous partition is not believable on face of it as much as there is variation of 33% in shares of different co-sharers. When the learned trial court found a prima facie case in favour of plaintiff/petitioner, it ought to have allowed the prayer for



injunction and ordered the parties to maintain status quo in the light of law as laid down by this Court as well as Hon'ble Supreme Court. The learned appellate court further erred in relying upon R.S. Khatiyani entry to hold the presence of prima facie case in favour of the plaintiff/petitioner. Learned counsel further submitted that the learned first appellate court has failed to consider that one co-sharer cannot act to the detriment of other co-sharer's interest if the properties are joint. Learned counsel further submitted that the learned subordinate courts have also failed to consider that R.S. Khatiyani is at best an evidence of possession and the possession continued only for convenience and the prayer for injunction ought to have been granted.

4. Learned counsel for the petitioner further submitted that taking advantage of the pending partition suit, respondents have started demolishing the whole tiled house standing over the suit plot and had been making plan to construct a new building. Learned counsel thus submitted that there is not a chit of paper to show partition between the four brothers and although the learned trial court held that petitioner has prima facie case, it failed to see that it was a joint family property on which permanent construction will be made and if the



respondents are not restrained, the same would result in irreparable loss to the petitioner who is having balance of convenience in his favour. Learned counsel referred to the case of *Nand Kumar Rai & Others Vs. State of Bihar & Others*, reported in **1974 PLJR 27**, a Full Bench decision of this High Court, wherein the Hon'ble Full Bench held that an entry in the record of rights does not create any right in favour of any person and it was not necessary to bring a suit to avoid a presumption arising under Section 106 of the Bihar Tenancy Act. An entry in the record of rights neither creates nor extinguishes right. Learned counsel thus submitted that undue weightage given by the learned subordinate courts on entry in khatiyani was not correct.

Learned counsel next referred to a decision of learned Co-ordinate Bench of this Court in the case of *Shamshad Alam and Others Vs. State of Bihar*, reported in **2025 SCC OnLine Pat 956**, wherein the learned Single Judge has held that it is an established position of law that mere wrong entry in connection with a land in the revenue records does not abolish the title of one nor create the title in favour of one. If entry in the revenue record does not create any rights, there was no need to challenge the same. Similar to the effect is the decision of learned Single



Judge of this Court in the case of *The State of Bihar & Anr. Vs. Alakh Singh & Ors.*, reported in *2013 SCC OnLine Pat 975*. Learned counsel next relied on the case of *Kumar Bimal Prasad Singh & Ors. Vs. Hare Ram Singh & Ors.*, reported in *2020(2) PLJR 899*, wherein the learned Single Judge relying on the case of *Maharwal Khewaji Trust, Faridkot Vs. Baldev Dass*, reported in *AIR 2005 SC 104* held that it is well settled proposition of law that if a lis has been admitted for adjudication then it becomes the duty of the court to preserve the subject matter of the litigation by an appropriate order and thus, the learned Single Judge directed the parties to maintain status quo over the suit land during the pendency of the suit. Thus, learned counsel submitted that the impugned orders are not sustainable and need interference by this Court.

5. Learned counsel appearing on behalf of the respondents at the outset submitted that the instant case is devoid of any merit and has been filed only to delay the partition suit filed by the petitioner himself. Learned counsel further submitted that the genealogy and detail of the property are admitted. An oral partition took place between the petitioner and the respondents and also amongst the other agnates in the year 1968 and since then the parties are in peaceful possession



of the shares of land allocated through oral partition. Subsequently, when the revisional survey was carried in the year 1972 the entries were made as per shares allocated to the parties by oral partition. Learned counsel further submitted that the lands were measured and partitioned in presence of registered Amin and on the map of partition every co-sharer put his signature. Revisional Survey Authority accordingly prepared map and khatian in the name of each branch separately under different and separate khatahs. The revisional survey was finalized in the year 1981-82 and accordingly, khatian and map were published but no one has made any objection or challenge before any court of law to the said entries. Learned counsel further submitted that after oral partition and entries in khatian, the parties started paying their rent individually and have been enjoying their peaceful possession over their share of land. Learned counsel further submitted that the partition was effected keeping in view the construction made thereon as well as the open portion of the land and for this reason, there has been difference in the total area of each party. The entire disputed land was divided in six sub-blocks bearing Block No. 1 to 6 and sub-block No. 1 and 5 were allotted to branch of Ram Swarath Mishra having total area of 10565 Sq. Kari. Total area of 11190



Sq. Kari was allotted to Bindeshwari Prasad Mishra, 6875 Sq. Kari was allotted to Ramashish Mishra, the ancestor of the plaintiff and in similar manner, an area of 7125 Sq. Kari was allotted to Ram Sagar Mishra, the original defendant no. 1. Learned counsel further submitted that there was difference in the area of said allocation for the reason that Ramashish Mishra and Ram Sagar Mishra were given pucca residential house besides open area which was constructed during the period of jointness and Bindeshwari Prasad Mishra and Ram Swarath Mishra were allotted vacant piece of land so their allotted area was more than allotted area of Ramashish Mishra and Ram Sagar Mishra. Learned counsel further submitted that the plaintiff/petitioner Mahendra Mishra filed Partition Suit No. 409 of 2008, after lapse of more than 40 years with regard to revisional survey Plot No. 813 (kha) and 814 (kha) allotted to heirs of Bindeshwari Mishra, claiming jointness and seeking injunction on the land already partitioned way back in the year 1968, in completely baseless and malafide manner. The plea of jointness is false, baseless and incorrect and this fact is also apparent from the subsequent events. The electricity connection of the lands in question were taken long back in the name of individuals who got the land after oral partition. Similarly rent



receipts of municipal corporation in the name of individual co-sharers makes it apparent that land in question is not joint. If the partition has already taken place by metes and bounds, the plaintiff/petitioner is estopped from claiming further partition in the suit land and for this reason, seeking injunction is completely wrong as the plaintiff/petitioner has no prima facie case and there is no balance of convenience in his favour. No irreparable loss is going to be caused to the plaintiff/petitioner. Moreover, the parties are in respective possession of their share and they have got right, title and interest over their respective share and the same cannot be disturbed in casual manner. Thus, learned counsel submitted that there is no infirmity in the impugned orders and the same does not require any interference by this Court.

6. I have given my thoughtful consideration to the rival submission of the parties and perused the record. The suit property is admittedly the purchased land of the ancestors of the plaintiff as well as defendants. The plaintiff/petitioner claims the property was not partitioned by metes and bounds and for this reason, he has filed partition suit. For claiming injunction, the plaintiff has submitted that respondent no. 1 has been making new construction on the suit land and the same was not denied



by respondent no. 1 who stated that there has been remodeling his old house over the suit land. The respondents claimed oral partition followed by sketch map being prepared by an Amin and subsequently, revisional survey entry being recorded as per shares of the co-sharers/joint owners. It is also not denied that the respective parties put their signatures over the document prepared by the Amin showing their respective shares. The plaintiff/petitioner has failed to explain the signature of his ancestor put over the said document. The grouse of the plaintiff/petitioner as well as claim over the suit property is only the ground of uneven distribution of share in the suit property in favour of his ancestor. But the same also holds true for defendant Ram Sagar Mishra/respondent no. 11. But the unequal distribution has been explained by the defendants/answering respondents and subsequent events leave credence to the explanation. The parties started enjoying their allocated shares and they got electricity connection, paid rent to the municipal corporation and got receipts and this arrangement continued for almost 40 years. Father of the plaintiff/petitioner did not challenge such arrangement and even the plaintiff/petitioner did not bring any suit to disturb such arrangement. All these facts cumulatively go on to show that the plaintiff/petitioner cannot



claim any prima facie case in his favour. What he has been doing is seeking injunction against the land allocated to the co-sharers more than 50 years back claiming the suit property to be joint. This clearly shows even the balance of convenience does not lie in favour of the plaintiff/petitioner. In these circumstances, there is no question of any irreparable loss to the plaintiff/petitioner. Further, even if the claim of the plaintiff/petitioner is upheld to the sake of argument or having a prima facie case and in suit property being joint, what the plaintiff/petitioner has been seeking is injunction over the joint family property which is in possession of different co-sharers and such prayer for injunction could not be allowed as the same is not permissible under the law having regard to the facts and circumstances. Much stress has been put on the fact that revisional survey entry could not create any title in favour of any person. Still there is presumption of correctness of such entries and correctness of entry has to be judged with reference to the factum of possession and not of title as held in ***Nand Kumar Rai & Others Vs. State of Bihar & Others*** (*supra*) coupled with the continuous possession, the plaintiff/petitioner would need to rebut the claim of the defendants/respondents to make out a case in his favour. In the light of these facts and



circumstances, the case law cited by the plaintiff/petitioner in the case of ***Kumar Bimal Prasad Singh & Ors. Vs. Hare Ram Singh & Ors. (supra)*** will not come to the rescue of the plaintiff/petitioner as facts are quite distinguishable.

7. Therefore, in the light of aforesaid discussion I am of the considered view that the plaintiff/petitioner has failed to make out a case in his favour. Further, the plaintiff/petitioner has failed to show perversity in the impugned orders to make this Court interfere with the impugned orders as this Court could not lightly interfere with the concurrent findings recorded by two subordinate courts. There is no business of this Court to enter into fresh consideration of facts and to go on to disturb the concurrent findings unless and until there is some perversity or the subordinate courts have acted beyond their jurisdiction or failed to exercise its jurisdiction vested in them. There is no such occasion inviting interference by this Court.

8. Hence, finding no infirmity in the impugned orders, the orders dated 21.03.2023 and 08.03.2018 are affirmed.

9. Accordingly, the present petition stands dismissed.

10. However, it is made clear that the observation touching upon the merits of the case are only for the purpose of disposal of the present petition and would not prejudice the



learned trial court in any manner in disposing of the partition
suit of the plaintiff.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	26.03.2025
Uploading Date	22.05.2025
Transmission Date	NA

