

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.609 of 2023

1. Sri Braj Bhushan Mehta @ Braj Bhushan Prasad Son of Late Laxman Mahto, Resident of Mohalla- Gulzarbagh Gumti, P.O. Gulzarbagh, P.S. Alamganj, Distt. Patna.
2. Kumar Chandan Son of Sri Braj Bhushan Mehta @ Braj Bhushan Prasad, Resident of Mohalla- Gulzarbagh Gumti, P.O. Gulzarbagh, P.S. Alamganj, Distt. Patna.
3. Kumar Pankaj Son of Sri Braj Bhushan Mehta @ Braj Bhushan Prasad, Resident of Mohalla- Gulzarbagh Gumti, P.O. Gulzarbagh, P.S. Alamganj, Distt. Patna.
4. Kumar Rajan Son of Sri Braj Bhushan Mehta @ Braj Bhushan Prasad, Resident of Mohalla- Gulzarbagh Gumti, P.O. Gulzarbagh, P.S. Alamganj, Distt. Patna.

... .. Petitioner/s

Versus

1. Most. Nutan Devi @ Rajo Devi W/o Late Lal Babu Mahto, Resident of Mohalla- Biruachak, Patna City, P.O. Patna City, P.S. Mehandiganj, Distt. Patna.
2. Sanjeev Kumar Son of Late Lal Babu Mahto, Resident of Mohalla- Biruachak, Patna City, P.O. Patna City, P.S. Mehandiganj, Distt. Patna.
3. Sandeep Kumar @ Bittu Mahto Son of Late Lal Babu Mahto, Resident of Mohalla- Biruachak, Patna City, P.O. Patna City, P.S. Mehandiganj, Distt. Patna.
4. Rajeev Kumar Son of Late Lal Babu Mahto, Resident of Mohalla- Biruachak, Patna City, P.O. Patna City, P.S. Mehandiganj, Distt. Patna.
5. Circle Officer Sadar, Patna having his Office at Patna near Gandhi Maidan, Distt. Patna at Present Kumhrar, Under P.S. Kankarbagh, Distt. Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Akhileshwar Singh, Advocate Mr. Venkatesh Kirti, Advocate
For the Respondent/s	:	Mr. Rajesh Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 15-07-2025

The record taken up on mentioning being made on
behalf of the petitioner. However, office has pointed out certain



defects.

2. The learned counsel for petitioners is directed to remove all the defects as pointed out by the office within two weeks, failing which the matter shall be brought to the notice of this Court.

3. Heard learned senior counsel appearing on behalf of the petitioners and learned counsel appearing on behalf of the respondent nos. 1 to 4.

4. The learned senior counsel appearing on behalf of the petitioners submits that the petitioners are aggrieved by the order dated 05.04.2023 passed by the learned Sub Judge-VI, Patna City in Title Suit No. 138/2009, whereby and whereunder the petition filed by the plaintiffs/petitioners for correction in the order dated 03.06.2017 has been rejected. The learned senior counsel further submits that the plaintiffs have filed the present suit for declaration of their title and possession over the property as described in Schedule-I of the plaint against the defendants. The claim of the plaintiffs is that there had been oral partition in joint family property by metes and bounds between two brothers, namely Dwarika Mahto and Laxman Mahto and Schedule-I & II properties were allotted to the exclusive share of Laxman Mahto, who had two sons, namely Lal Babu Mahto



and Braj Bhushan Mahto. Lal Babu Mahto died in the life time of his father, namely Laxman Mahto and the defendants are his descendants. Further oral partition took place between two branches in 1986 by metes and bounds and according to which the properties described in Schedule I of the plaint besides house of equal area was allotted to the share of plaintiffs and they came into possession and got their name mutated. Similarly, properties described in Schedule II of the plaint and house of equal area were allotted to the share of defendant nos. 1 to 4 and they also came their possession to the allotted property. Some dispute arose between the parties and the plaintiffs filed a suit for declaration of their title and possession. During pendency of the suit, an application has been filed under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code') on 08.06.2009 and vide order dated 02.07.2009, the learned trial court directed the defendant nos. 1 to 4 to maintain *status quo*. The learned senior counsel further submits that, thereafter, vide order dated 03.06.2017, the injunction application was disposed of directing both the parties to maintain *status quo* with regard to the suit property of Schedule I. The learned senior counsel further submits that while the learned trial court discussed the matter at



length and recorded a finding that it was admitted by the defendants' side that Schedule I property belongs to the plaintiffs, still the learned trial court instead of only restraining the defendants, also ordered the plaintiffs to maintain *status quo* with regard to Schedule I property. The learned senior counsel further submits that this part of the order is wrong and, for this reason, the plaintiffs filed an application on 09.05.2019 seeking modification in the order to the extent that in the order dated 03.06.2017, the part order by which the plaintiffs have been directed to maintain *status quo* over the suit property, the same be expunged. The learned senior counsel further submits that it is an error apparent from the discussion made in the order dated 03.06.2017 and, therefore, the learned trial court ought to have considered this fact and modified the order dated 03.06.2017, but the learned trial court wrongly held that it was not a mistake and the learned Predecessor passed the order after considering the merits of the case. Thus, learned senior counsel submits that the impugned order needs to be set aside.

5. On the other hand, learned counsel appearing on behalf of the respondent nos. 1 to 4 submits that there is no infirmity in the impugned order. From the record, it is apparent that the order dated 03.06.2017 has been passed after



consideration of the facts and arguments of the parties and the plaintiffs did not object to the passing of the said order for about two years and only after two years, they filed an application for modification/correction in the order. This shows that the plaintiffs were in agreement with the order and for this reason they did not challenge the order for two years. Thus, learned counsel submits that the impugned order is correct and proper and does not require any interference by this Court.

6. Perused the record.

7. From perusal of record, I find that the learned trial court while passing the order dated 03.06.2017 has discussed the case of both the parties and, thereafter, passed an order directing both the parties to maintain *status quo* with regard to Schedule I property, which is disputed suit property as is apparent from the application dated 08.06.2007 filed by the plaintiffs under Order 39 Rule 1 & 2 read with Section 151 of the Code. Further perusal of record, especially written statement placed by the learned senior counsel for perusal of this Court, shows that there has not been any unequivocal admission of right, title and possession of the plaintiffs over Schedule I property by the defendants, rather it has been claimed that the defendants have also their claim over the Schedule I property



exclusively claimed by the plaintiffs. Therefore, restraining orders dated 03.06.2017 does not appear to be any mistake of fact or mistake of law as claimed by the learned senior counsel for the plaintiffs. Moreover, if the plaintiffs were aggrieved by the said order, proper course open to the plaintiffs was to approach the superior court by filing appeal under Order 43 Rule 1 of the Code and not by filing application under Section 151 of the Code before the same court. When there is specific provision in the Code, there could be no application of inherent powers of the Court. Further I find that the impugned order is a reasoned and speaking order and this Court in its supervisory jurisdiction under Article 227 of the Constitution of India would not like to interfere in such orders at the instance of the plaintiffs/petitioners.

8. In the light of cumulative reading of the aforesaid discussion, I have no hesitation in holding that the learned trial court has not committed any illegality or irregularity and there appears no error of jurisdiction so as to interfere with the impugned order and hence, the impugned order dated 05.04.2023 passed by learned Sub Judge-VI, Patna City, in Title Suit No. 138 of 2009 is affirmed.

9. Finding no merit in the present petition, the same is



dismissed.

10. Consequently, pending interlocutory application,
if any, also stands disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.07.2025
Transmission Date	NA

