

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.837 of 2023**

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Futun Pandey S/o Late Lalan Pandey R/o Village Rampur, Police Station  
Nawanagar, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Buxar.
2. The Mukhiya, Gram Panchayat Raj Rampur, P.S. Nawanagar, District-  
Buxar.
3. The District Collector, Buxar.
4. The Circle Officer, Kesath, Block Nawanagar, Dist.- Buxar.
5. Shambhu Nath Tiwari, S/o Late Yadunandan Tiwari R/o Village Rampur,  
Police Station Nawanagar, District- Buxar.

... .. Respondent/s

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**Appearance :**

|                         |   |                                        |
|-------------------------|---|----------------------------------------|
| For the Petitioner/s    | : | Mr.Ajit Kumar, Advocate                |
| For the State           | : | Mr. Birendra Prasad Singh, AC to SC-19 |
| For the respondent no.5 | : | Mr. Sanjay Kumar Ghosarvey, Advocate   |

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

**Date : 08-04-2025**

Heard learned counsel for the respective parties.

2. The petitioner is aggrieved by the order dated 07.06.2023 passed in Misc. Appeal No. 08/2017 by the court of learned Additional District Judge-1, Buxar and order dated 21.06.2017 passed in Title Suit No. 690/2013 by the learned Sub Judge-1, Dumraon, Buxar whereby and whereunder the learned trial court rejected the prayer of the plaintiff/petitioner for grant of injunction and the same was upheld by the learned first appellate court.

3. The learned counsel for the petitioner submits that



the learned trial court erred on the facts as well as on the law. The learned trial court did not consider the fact that *prima facie* case lies in favour of the plaintiff/petitioner and it would not cause irreparable loss to him if injunction was not granted. Further, the balance of convenience was also in favour of the plaintiff/petitioner. The learned counsel further submits that the petitioner filed Title Suit No.690/2013 for declaration of his title, right and interest and further confirmation of possession over the suit land mentioned in Schedule 3 of the plaint bearing R.S. Khata No. 253, Plot No. 1169, Area 3 decimals, which is part of Old Khat No. 27/1, Old Plot No. 811, Area 37 decimals and recorded in the name of ancestor of the plaintiff. It has also been stated in the plaint that R.S. Survey *Khatian* with respect to R.S. Plot No. 1169, Area 3 decimals has been wrongly prepared in the name of *Anabad Sarva Sadharan*, whereas the same is the property of the plaintiff. The learned counsel further submits that the first four defendants are authorities, who are respondent nos. 1 to 4 herein and respondent no. 5 has been made defendant no. 5 on his intervener petition as the respondent no. 5 has been eager to get the disputed land declared as public alley. The learned counsel further submits that the defendants appeared and filed their written statements



wherein it has been claimed that suit land does not belong to the plaintiff and it is not a part of the Old Plot No. 811, rather it is a part of Old Plot No. 837 bearing Old Khata No. 116, Area 5 decimals wherein it has been recorded as *gairmajarua aam* and corresponding to the New Survey *Khatiyani* No. 253, Plot No. 1169, Area 3 decimals and New Plot No.1088, Area 0.2 decimals have been recorded as *Anabad Sarva Sadharan*. During the pendency of the title suit, the plaintiff/petitioner filed a petition dated 02.11.2016 under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code') praying for *status quo* over the suit land till disposal of the suit. The claim of the plaintiff/petitioner was contested by defendant no.5/respondent no.5, who filed his rejoinder, which was subsequently adopted by the other defendants. After hearing the parties, the learned Sub Judge-1, Buxar vide order dated 21.06.2017 rejected the aforesaid petition dated 02.11.2016 filed by the plaintiff/petitioner. Being aggrieved and dissatisfied with the aforesaid rejection order of the learned trial court, the plaintiff/petitioner then filed Misc. Appeal No. 08/2017, which was also dismissed vide order dated 07.06.2023 passed by learned Additional District Judge-1, Buxar. Both the orders are under challenge before this Court.



4. The learned counsel for the petitioner further submits that though the learned trial court observed that the plaintiff/petitioner is in possession over the suit land, on the basis of wrong entry in the New Survey *Khatiyān* with respect to claim of public alley in question between the parties, it went on to pass the impugned order. The learned counsel further submits that the learned courts below overlooked the facts that the defendants except defendant no. 5 have not stuck to their pleadings. The learned counsel also refers to the interim order dated 23.11.2017 of Fast Track Court-2, Buxar in the instant Miscellaneous Appeal No. 08/2017 whereby and whereunder the parties were directed to maintain *status quo* with regard to said Plot No. 1169. However, while passing the final orders, the learned first appellate court ignored the findings recorded by its predecessor. The learned counsel further submits that it has been the contention of the plaintiff/petitioner that a wrong entry has been made in the *Khatiyān* and, for the said reason, the case was brought against the defendants/respondents. The learned counsel further submits that the plaintiff/petitioner has raised certain triable issues and since he is in possession, if the order for *status quo* is not passed and his possession is disturbed, he would suffer loss and being in possession makes balance of



convenience in favour of the plaintiff/petitioner. On this account, the impugned orders are not proper and valid and the same need to be set aside.

5. Learned counsel appearing on behalf of the respondent no. 5 vehemently contends that there is no infirmity in the impugned orders. Learned counsel submits that the plaintiff/petitioner claims the suit property on the basis that it was part of old Plot/*Khesra* no. 811 under old Khata No. 27/1, Area 37 decimals, which is recorded in the name of the ancestor of plaintiff. From the said plot, nine plots were carved out which are plot nos. 1168, 1167, 1166, 1165, 1164, 1067, 1068, 1069 and 1070. The 3 decimals land went in *rasta* which has connected plot no. 1088. Cadestral Survey *Khatian* of the year 1909 shows that Plot/*Khesra* No. 810, Area 13 decimals has been recorded as *gairmazarua aam* and Plot/*Khesra* No. 837, Area 5 decimals shows as *rasta*. The revisional survey *khatiyān* shows Plot No. 1169 arising out of Plot/*Khesra* No. 837, Area 3.1 decimals is recorded as *Anabad Sarv Sadharan* and *rasta* which clearly shows that by the side of *Thakurbari* which is situated on Plot No. 1170, arising out of Plot No. 810 *rasta* is there which is encroached by the petitioner and other persons. After publication of final *khatiyān* in the year 1970, 42 years



thereafter, the plaintiff has filed the suit and the said suit has been filed only with an intention to delay the encroachment proceeding which is initiated against the plaintiff/petitioner as he has encroached upon the *rasta* by the side of *Thakurbari* and the said *rasta* does not belong to the plaintiff as is apparent from the Cadestral Survey *Khatian* as well as the Revisional Survey *Khatian* entries. The plaintiff had earlier filed a suit bearing Title Suit no. 493 of 2013 which was dismissed as the suit was filed without service of notice. An encroachment proceeding no. 03/2012-13 was initiated against the encroachers which includes the petitioner and orders have been passed against the petitioner on 05.04.2013 for removal of the encroachment. Even the appeal against the said order was dismissed and the encroachers were directed to remove the encroachment. Thus, the learned counsel submits that there is no document in favour of the plaintiff/petitioner and the learned trial court as well as the learned first appellate court has rightly rejected the prayer of *status quo* made by the plaintiff over the suit land.

6. Learned counsel for the respondent no. 5 next submits that as concurrent findings of two courts have been recorded against the prayer for injunction of the plaintiff, the orders could not be interfered with. Learned counsel refers to



the case of ***Dalpat Kumar and Anr. Vs. Prahlad Singh and Ors.*** reported in ***AIR 1993 SC 276*** wherein the Hon'ble Supreme Court held that the phrases "prima facie case"; "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. Since there is no *prima facie* case or balance of convenience in favour of the petitioner and no irreparable loss would be caused to the petitioner, the learned subordinate courts rightly passed the orders.

7. Learned counsel for the respondent no. 5 next refers to the case of ***Esha Ekta Apartment CHS Vs. Municipal Corporation of Mumbai*** reported in ***(2012) 4 SCC 689***, wherein the Hon'ble Supreme Court in paragraph 19 referring to the case of ***Wander Ltd. Vs. Antox India (P) Ltd.*** reported in ***1990 Supp SCC 727*** has made the following observation:

*"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. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."*

Thereafter, the Hon'ble Supreme Court further held in paragraph 21 that both the trial court and the High Court have assigned detailed reasons for declining the petitioners' prayer for temporary injunction and they do not find any valid ground or justification to take a different view in the matter.

8. Learned counsel for the respondent no. 5 further submits that in the present case as well, the position is similar and the orders have been passed after discussion of all the facts and material available and applying the correct provision of law.



Therefore, the orders need to be sustained.

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

10. The power of the courts to grant injunction is a discretionary relief and in a catena of decisions, it has been held by the Hon'ble Supreme Court that unless a party can show the presence of *prima facie* case, balance of convenience in his favour and further show that if injunction is not granted in his favour he will suffer irreparable injury, injunction should not be granted.

11. Further we are faced with the situation where two subordinate courts have recorded a concurrent finding, unless these orders suffers from arbitrariness or is capricious or the orders are simply perverse, or the orders have been passed ignoring the settled principles of law rejecting the grant of injunction, this Court has got no jurisdiction to entertain any challenge to such orders.

12. In the present case, plaintiff /petitioner has based his claim on the entry of certain plot numbers in favour of his ancestors but at the same time the Cadestral Survey entry and Revisional Survey entry show the disputed portion of the plot to be *Anabad Sarv Sadharan/rasta*, that is a material fact to be



taken into consideration. There are no other documentary material in further support of the case of the plaintiff/petitioner. No doubt, plaintiff/petitioner could claim that there is a serious disputed question to be tried and the plaintiff may succeed in his suit. But except for that no other material has come up on record to support the claim of the plaintiff. Thereafter, perusal of the impugned orders show these orders have been passed after due consideration of facts and the said orders could not be said to be arbitrary or capricious or perverse. The ingredients for grant of injunction has also been taken into consideration.

13. In these circumstances, there is hardly any material for this Court to intervene in two concurrent orders of the subordinate courts and therefore, the orders dated 07.06.2023 and 21.06.2017 do not need any interference of this Court and are affirmed.

14. Accordingly, this petition stands dismissed.

**(Arun Kumar Jha, J)**

V.K.Pandey/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 11.04.2025 |
| Transmission Date | NA         |

