

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1238 of 2019**

Govind Prasad Rajgarhia S/o Surajmal Rajgarhia Resident of Mohalla- Lal
Bazar, Ward No. 24, P.O.- Bettiah, P.s.- Bettiah Nagar, Distt.- West Champaran

... .. Petitioner/s

Versus

- 1.1. Most. Madhu Devi Wife of Late Suresh Rajgarhia, Resident of Mohalla -
Ujain Tola, Bettiah, P.O. and P.S. - Bettiah, District - West Champaran.
- 1.2. Navneet Kumar Son of Late Suresh Kumar Rajgarhia Resident of Mohalla -
Ujain Tola, Bettiah, P.O. and P.S. - Bettiah, District - West Champaran.
- 1.3. Nisha Tulsyan Wife of Sri Manoj Tulsyan, Resident of House No. - 5,
Someshwra Enclave, Beshu, P.O. Beshu, Surat, Gujrat - 395007.
- 1.4. Nitika Agrawal Wife of Sri Shekher Agrawal, Resident of Block - L-86, 2nd
Floor, Kirti Nagar, near Sports Club, New Delhi - 110015.
- 1.5. Sapna Ladha Wife of Sri Gaurav Ladha, Resident of Flat No. A - 302, G.P.
and H.P., Indralok, B-16, Sibhu Marg, Bani Park - Jaipur - 302016.
- 2.1. Rishi Rajgarhia Son of Late Ashok Kumar Rajgarhia, Resident of Mohalla -
Lal Bazar, Ward No. 24, P.O. and P.S. Bettiah, District- West Champaran.
- 2.2. Ashish Kumr Rajgarhia S/o Late Ashok Kumar Rajgarhia, Resident of
Mohalla - Lal Bazar, Ward No. 24, P.O. and P.S. Bettiah, District- West
Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pandit Jee Pandey, Advocate Mr. R.P. Tripathi, Advocate
For the Respondent no.1	:	Md. Waliur Rahman, Advocate Mr. Nishant Kumar Sinha, Advocate
For the Respondent no.2	:	Mr. Ajay Kumar Singh, Adv.

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

Date : 22-04-2025

The present petition has been filed for quashing the
order dated 25.04.2019 by learned Additional District and
Sessions Judge-VII, Bettiah, East Champaran in M.A. No. 10 of
2018 whereby and whereunder the learned Appellate Court has
set aside the order dated 19.04.2018 passed by learned Sub



Judge-I, Bettiah in Title Suit No. 13 of 2018, restraining both the sides from alienating any part of suit property till pendency of the suit.

2. Briefly stated facts of the case are that petitioner and respondent no. 2 are plaintiffs before the learned trial court and the respondents are defendants. The plaintiffs filed Title Suit No. 13 of 2018 before the learned Sub Judge-I, Bettiah for declaration of title and confirmation of possession with further prayer for grant of permanent injunction and other ancillary reliefs. In year 1982, father of the original defendant filed a Partition Suit bearing no. 31 of 1982 before the learned Sub Judge, Bettiah. It appears a compromise took place between the parties and Panchanama was prepared on 24.04.1990. The plaintiffs claim right and title over Schedule-2 property of the plaint which have been allotted to the plaintiffs in terms of Panchanama dated 24.04.1990. The plaintiffs claim that original defendant started creating hindrance over the peaceful possession of the plaintiffs and also tried to alienate all of the plaintiff's share of land which the plaintiffs received in the compromise date 24.04.1990. The original defendant also tried to destroy the property of the plaintiff as claimed by the plaintiffs. The original defendant appeared on receipt of notice



and filed his written statement and contested the suits on various grounds denying the claim of the plaintiffs. In the meantime, being aggrieved by the constant interference of the original defendant in their suit property, the plaintiffs filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure (in short “the Code”) with a prayer to restrain the original defendant from disturbing the peaceful possession and from interfering with the enjoyment of their property and further to restrain them from creating any third party interest in the property till the disposal of the suit. The original defendant filed a rejoinder to the said application on 13.03.2018 pursuant to the show cause issued by the Court. After hearing the parties the learned trial court, vide order dated 19.04.2018, allowed the injunction application of the plaintiff directing the original defendant to maintain the *status quo* and not to change the nature of the suit property and not to create any third party interest. Aggrieved by the order of the learned trial court dated 19.04.2018, the original defendant filed M.A. No. 10 of 2018 for setting aside the order of the learned trial court and the learned Appellate Court after hearing the parties set aside the Order dated 19.04.2018 passed by the learned trial court vide its Order dated 25.04.2019. This Order is under challenge before



this Court.

3. Learned counsel appearing on behalf of the petitioner submits that the impugned order is not sustainable as the same has been passed against the facts of the case. The learned Appellate Court did not appreciate that land belongs to the plaintiffs who got the said land in the light of compromise/family arrangement as indicated in Panchanama dated 24.04.1990. The learned Appellate Court failed to consider the reasoning adopted by the learned trial court while passing the order of injunction against the original defendant while considering the family arrangement and the conduct of the parties and tried to protect the property from being dissipated. The learned trial court had taken into consideration that it was defendant/respondents who had nearly sold all of the property. The original defendant did not claim that the plaintiffs were transferring the property or alienating the same and for this reason there was no occasion for the Appellate Court to interfere with the order passed by the learned trial court. The learned counsel further submitted that the learned Appellate Court further failed to take into consideration the fact that the Panchanama was executed in the year 1990 and accordingly the persons concerned were enjoying and alienating their respective



shares in accordance with their convenience and since 1990, this family arrangement has not been disputed by the original defendant but now the defendant claims that Panchanama is an unregistered paper of family arrangement and it has got no value. The learned Appellate Court failed to take into consideration that such document was corroborative evidence of partition and therefore, the *prima facie* case and balance of convenience have been lying in favour of the plaintiffs. On this aspect learned counsel referred to the decision of the Kerala High Court in the case of ***Thayyullathil Kunhikannan & Ors. Vs. Thayyullathil Kalliani & Ors.*** reported in ***AIR 1990 Kerala 226*** (paragraph 39 and 40). Thus, the learned counsel submitted that the impugned order could not be sustained and the same be set aside.

4. Learned counsel appearing on behalf of respondent 2nd set supported the contention of the learned counsel for the petitioner. Learned counsel submitted that the learned trial court took into consideration the family arrangement and finding that the plaintiffs have been in possession of the suit land and also considering the fact that the original defendant had been trying to sell off the land of the plaintiffs after selling all of his land, recorded its finding that the plaintiffs have a *prima facie* case



and balance of convenience in their favour. If the defendant sell the suit land, or dispossesses the plaintiffs, the plaintiffs would suffer irreparable loss which could not be compensated and would also give rise to multiplicity of litigation. Learned counsel further submitted that the learned Appellate Court without any cogent reason discarded the family arrangement document. It has failed to consider that in his written statement, the original defendant had admitted the execution of document and his signature on the said document though he claimed that the original defendant was made to put his signature under coercion. The learned Appellate Court proceeded in the matter considering the family arrangement document to be a fraudulent document and this compromise as completely wrong. Learned counsel referred to the decision of Hon'ble Supreme Court in the case of *Thulasidhara & Anr. Vs. Narayanappa & Ors.* reported in *(2019) 6 SCC 409* wherein the Hon'ble Supreme Court held that such a family settlement, though, not registered would operate as a complete estoppel against the parties to such a family settlement. Even without registration, written document of family arrangement/settlement can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. The Hon'ble Supreme Court held that



family arrangement is reduced in writing but without registration is inadmissible but it can be used as corroborative piece of evidence for explaining the arrangement or showing the conduct of the parties. Learned counsel further submitted that so the unregistered document of family arrangement cannot be simply discarded or brushed aside. The plaintiffs were having right, title and possession over the suit property under this family arrangement and as there was no danger to the property from the side of the plaintiffs, the learned Appellate Court could have taken into consideration this fact and should not have interfered with the order of the learned trial court and restrained both parties from changing the nature of suit property, alienating the same and to maintain *status quo* over it rather than restraining the original defendant. Thus, the learned counsel submitted that the impugned order suffers from various infirmities and error of jurisdiction of the Appellate Court and the same be set aside.

5. Learned counsel appearing on behalf of the respondents 1st set vehemently contended that there is no infirmity in the impugned order and the same does not require any interference. Learned counsel for the respondents 1st set submitted that the plaintiffs filed a false suit based on a



fraudulent document. The plaintiffs claim that Title Suit No. 31 of 1982 was disposed of on the basis of compromise dated 24.04.1990 but Title Suit No. 31 of 1982 was dismissed for default in the year 1994 and if any compromise might have taken place between the parties, nothing could have prevented the plaintiffs for bringing to the notice of the Court the compromise of the parties. Learned counsel further submitted that in Title Suit No. 31 of 1982, more than 61 persons were parties and the compromise dated 24.04.1990 appears to have taken place between two brothers only. The learned counsel further submitted that the land in question stands registered in the names of one of the brothers of the original defendant and also in the name of deceased mother of the defendant as well as in the name of the uncle of the defendant but the heirs of these persons have not been made parties in this suit and therefore, the suit suffers from the defect of non-joinder of necessary parties. Learned counsel further submitted that the story of compromise is completely false and concocted and it was the outcome of fraudulent and repressive maneuvers of the father of the plaintiff no. 1. Pursuant to the said compromise, no transfer of property ever took place or any registered document was created with regard to landed properties. The learned counsel further



submitted that the suit properties are not even in the name of plaintiffs or their ancestors and existed in the names of persons outside the branch of the plaintiffs/defendants and sale of such properties have been made by those persons or by the original defendant holding power of attorney on their behalf. The compromise deed of 24.04.1990 does not contain the names and signatures of the persons in whose names the properties exist. Learned counsel further submitted that the learned trial court did not at all consider the documents of the defendant otherwise it would have found that the defendant has been in continuous possession of the suit properties up to date as rent receipts have been issued in his name. The learned trial court also did not take into consideration the fact that the description of the properties were vague and even the learned Advocate Commissioner represented showing his inability to identify one of the suit properties. Therefore, the learned Appellate Court rightly intervened in the matter and set aside the order of the learned trial court. Learned counsel further submitted that learned 1st Appellate Court took into consideration the suit property belonging to different persons outside the family and rightly came to a finding that the compromise dated 24.04.1990 and Partition Suit No. 31 of 1982 being dismissed on compromised



or withdrawn, are the facts which are required to be considered by the Court in trial and rightly held that there was no *prima facie* case or balance of convenience in favour of the plaintiffs. Learned counsel further submitted that moreover, the endeavour of the Court be towards the protection of the suit property till the pendency of the litigation.

The learned counsel referred to the decision of the Hon'ble Supreme court in the case of ***Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass*** reported in ***AIR 2005 SC 104*** wherein the Hon'ble Supreme Court held that unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the properties to be changed which also includes alienation or transfer of the properties which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings.

On the same point learned counsel referred to the decision of Single Judge of this Court in the case of ***Dharam Nath Ojha & Ors. Vs. Raghunath Ojha*** reported in ***2001 (2) PLJR 268*** wherein the learned Single Judge held that law is well settled 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 so that the same is available at the time of final adjudication and the decree does not become a barren one.

Learned counsel next referred to the decision of Hon'ble Supreme Court in the case of ***Dev Prakash & Anr. s. Indra & Ors.*** reported in ***(2018) 14 SCC 292*** wherein the Hon'ble Supreme Court held that the very essence of the concept of temporary injunction and receivership during the pendency of a civil litigation involving any property is to prevent its threatened wastage, damage and alienation by any party thereto, to the immeasurable prejudice to the other side or to render the situation irreversible not only to impact upon the ultimate decision but also to render the relief granted, illusory and quoted with approval the decision of ***Maharwal Khewaji Trust*** (supra). Thus, learned counsel submitted that there is no infirmity in the impugned order 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. Both the parties claim title, ownership and possession over the suit property and deny the claim of the respective opposite party. The plaintiffs claim the suit property by way of unregistered



family arrangement. Now, such documents are to be necessarily registered under the provisions of Section 17 of the Registration Act as it purports to create/declare/extinguish the right, title or interest of the value of more than 100 Rupees. Further, Section 49 of the Registration Act provides that any document which is not registered as required under the law could be inadmissible in evidence. Therefore, the claim of the plaintiffs based on such document is to be considered along with other facts and circumstances and the learned 1st Appellate Court rightly proceeded in the matter and took into consideration the other facts such as property being alienated by the outsiders as well as by the original defendant as power of attorney for those persons in whose name the properties existed. The learned trial court, on the other hand, did not take into consideration these facts and proceeded in the matter with a blinkered view. Further, the learned 1st Appellate Court proceeded in the matter and differed from the finding recorded by the learned trial court and recorded its own reasons for its finding. Unless there appears some gross illegality or perversity, there is no occasion for this Court to interfere with such orders. Moreover the order of the learned 1st Appellate Court is supported with sound reasoning and it has restrained both the parties from alienating the suit property



which is quite reasonable. The Hon'ble Supreme Court in the case of *Maharwal Khewaji Trust* (supra) has held that the suit property should be protected during pendency of the *lis*. This is for the reason that at the end of the day when the suit is finally disposed of and decree is passed, the said decree does not become a barren one. Further, not restraining the parties would result in multiplicity of litigation.

Moreover, the contention of the learned counsel for the respondent 2nd set about unregistered partition deed acting as estoppel against the other side could be considered when its authenticity is proved and its corroborative value would be for the purpose of showing or explaining the conduct of the parties and it could not be taken as a document of title of the parties as the learned counsel wants this Court to believe. Therefore, the reliance placed by the learned counsel for the petitioner as well as respondent 2nd set are not of much help to their cause.

7. In the light of the discussion made hereinbefore, I am of the considered opinion that there is no infirmity in the impugned order dated 25.04.2019 and the same is affirmed.

8. Accordingly, the present petition stands dismissed.

9. However, considering the fact that while allowing the appeal, the learned 1st Appellate Court directed the learned



trial court to dispose of Title Suit No. 13 of 2018 within 11 months and about 6 years have elapsed since the passing of the orders of the learned 1st Appellate Court and the suit is still pending. Therefore, the learned trial court is directed to proceed in the matter for expeditious disposal of the Title Suit and the parties are directed to cooperate and not to seek unnecessary adjournment or linger the matter to delay the trial. If, any of the parties is found to be adopting the delaying tactics, the learned trial court would sternly deal with such situation.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	AFR
CAV DATE	19.03.2025
Uploading Date	22.04.2025
Transmission Date	N/A

