

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1310 of 2019

Vijay Yadav@ Vijay Kumar S/o Deoraj Yadav Resident of Mohalla- Parbatia Tola, Bettiah, P.S. Bettiah (Mufasil), District- West Champaran.

... .. Petitioner/s

Versus

1. Hira Ram (Expunged vide order dated 02.07.2024) S/o Jangi Ram R/o Village- Banuchheper, P.O. and P.S.- Bettiah(M), District- West Champaran.
2. Arun Kr. Patel S/o Raghunath Patel R/o Mohalla- Purani Gudari, Bettiah, P.O. and P.S.- Bettiah (Town), District- West Champaran.
3. Ashish Kr. Rajgariha S/o Ashok Kr. Rajgarhia R/o Mohalla- Lal Bazar, Bettiah, P.O. and P.S.- Bettiah (Town), District- West Champaran.
4. Bettiah Estate, under Court of Wards, through its Manager, Bettiah, P.O. and P.S.- Bettiah (Town), District- West Champaran.
5. Badari Devi W/o Late- Ram Chandra Raut R/o Village- Khairatia, P.O. and P.S.- Chanpatia, District- West Champaran.
6. Dudhnath Ram son of Late Binod Raut R/o Village- Khairatia, P.O. and P.S.- Chanpatia, District- West Champaran.
7. Ashok Prasad son of Late Binod Raut R/o Village- Khairatia, P.O. and P.S.- Chanpatia, District- West Champaran.
8. Laddu Prasad son of Late Binod Raut R/o Village- Khairatia, P.O. and P.S.- Chanpatia, District- West Champaran.
9. Usha Devi D/o Late Binod Raut, W/o Nand Lal Raut R/o Village- Ferwa, P.O.- Amwa, P.S.- Bettiah (M), District- West Champaran.
10. Birbal Yadav S/o Deoraj Yadav R/o Mohalla- Parbatia Tola, Bettiah, P.O. and P.S.- Bettiah (Mufasil), District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Akhileshwar Kumar Shrivastva, Advocate
For the Respondent/s : Mr.Ajay Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 13-05-2025

The petitioner has filed the instant civil miscellaneous petition for setting aside the order dated 30.05.2019 passed by learned District Judge, West Champaran at Bettiah in Misc. Appeal No. 36 of 2016 which was preferred against the order



dated 15.06.2016 passed in Title Suit No. 44 of 1995 by learned Sub Judge-V, West Champaran at Bettiah, whereby and whereunder the learned appellate court affirmed the order dated 15.06.2016 passed by the learned trial court by which the learned trial court granted mandatory injunction in favour of plaintiff no. 3.

2. Briefly stated, the facts of the case emanating from the record are that the plaintiffs/respondent nos. 1 & 2 instituted Title Suit No. 44 of 1995 against the defendant 1st set/respondent no. 4 and other defendants seeking declaration that compromise and decree passed in Title Suit No. 33 of 1994 were illegal, collusive and have no binding effect against the plaintiffs who are bonafide purchasers and are in possession of the suit land. The suit land relates to Khata No. 2, Khesra No. 27M area 1 katha 5 dhurs and Khata No. 2, Khesra No. 27M area 4 katha situated at village – Kargahia (Purvi) Peonibag, Bettiah. The original plaintiff nos. 1 and 2 claimed that defendants 2nd set transferred the suit land in their favour on 14.02.1983 vide registered sale deed No. 6002 for 1 katha 5 dhurs being southern portion of the suit land in favour of plaintiff no. 2 and similarly in favour of plaintiff no. 2, 4 katha in northern portion of the suit land through registered sale deed



No. 6003 on the same day and after taking consideration amount, defendants 2nd set put the plaintiff nos. 1 and 2 in possession over the suit land. Prior to purchase, defendant no. 1 filed Title Suit No. 105 of 1981 in the court of learned Sub Judge, Bettiah, West Champaran against the defendants 2nd set and the suit was decreed against defendant no. 1 and in favour of defendant no. 2. Thereafter, defendant 1st set preferred an appeal vide Title Appeal No. 33 of 1994 which was compromised and defendant 2nd set admitted title and possession of defendant 1st set, Bettiah Estate, over the land in question. Coming to know about the compromise in Title Appeal No. 33 of 1994, the plaintiffs have filed the present suit as a cloud hovered over the title of the plaintiffs. Subsequently, through amendment dated 27.02.2002, plaintiff no. 3/respondent no. 3 herein got impleaded in the suit on his own motion. The petitioner and respondent no. 10 entered their appearance and filed written statement jointly on 29.08.2005. On 27.02.2002, on an application filed by plaintiff nos. 1 and 2 under Order 39 Rule 1 and 2 of the Code of Civil Procedure (in short 'the Code'), for temporary injunction was allowed in favour of plaintiff nos. 1 and 2 over the suit land restraining defendant no. 1, Bettiah Estate. On 28.08.2002, the prayer of plaintiff no. 3



made under Order 1 Rule 10 of the Code was allowed on the ground that plaintiff nos. 1 and 2 have already sold their land to plaintiff no. 3 through registered sale deed dated 16.06.2001. Thereafter, on 03.10.2002, the plaintiffs filed a petition under Order 1 Rule 10 of the Code for impleadment of names of petitioner and his younger brother, namely Birbal Yadav, as defendant 3rd set in their plaint on the ground that the petitioner and his brother have been creating obstruction in peaceful possession of the plaintiffs over the suit land and in their absence, the order of injunction would be meaningless and subsequently, they were impleaded as parties. After nine years of the passing of the order of injunction, plaintiff no. 3 filed a petition under Section 151 of the Code on 15.01.2011 before the learned trial court for police protection and for appointment of Executive Magistrate for vacating the illegal possession of defendants 3rd set claiming that even after injunction order, they were dispossessed by the defendants 3rd set/respondents 3rd set. On 08.06.2011, the learned trial court after hearing the parties and perusing the record, rejected the petition of plaintiff no. 3. Thereafter, plaintiff no. 3 challenged the said order dated 08.06.2011 by preferring an application under Article 227 of the Constitution of India vide C.W.J.C. No. 13231 of 2011. The said



petition was rejected by a learned Single Judge of this Court. After three years of the orders passed by this Court, on 04.07.2014, plaintiff no. 3 filed a petition before the learned trial court for mandatory injunction and ad interim injunction over the suit land to get back possession over the suit land from the hands of defendants 3rd set through police force. On 22.07.2014, defendants 3rd set filed rejoinder to the petition of plaintiff no. 3 denying the allegation made by plaintiff no. 3 stating that plaintiff no. 3 never came into possession of the suit land. Pursuant to the said application of plaintiff no. 3 dated 04.07.2014, the learned trial court called for a report from concerned Circle Officer on 11.02.2016 with regard to actual possession of the suit land as well a report regarding dispossession of plaintiff no. 3 in the hands of defendant 3rd set. Consequently, report was submitted by the Circle Officer after conducting enquiry through Circle Inspector and Halka Karamchari. The report showed that defendants 3rd set/respondents 3rd set were in possession of the suit land. However, on 15.10.2016, the learned trial court after hearing the parties and ignoring the previous order dated 08.06.2011 passed by the predecessor court, allowed the prayer of plaintiff no. 3 for mandatory/ad interim injunction. The petitioner challenged the



said order dated 15.10.2016 before this Court by filing Civil Misc. No. 703 of 2016 which was heard by a learned Single Judge but the said petition was dismissed as withdrawn with liberty to file an appeal as per the provisions of the Code. Thereafter, on 05.11.2016, the petitioner challenged the aforesaid order before the learned District Judge, West Champaran at Bettiah by filing Misc. Appeal No. 36 of 2016 and after hearing the parties, on 30.05.2019, the learned appellate court rejected the prayer of the petitioner. The said order is under challenge before this Court.

3. Learned counsel for the petitioner submitted that the orders impugned are patently illegal and not sustainable in the eyes of law. When there is no report or any material on record regarding possession or dispossession of plaintiff no. 3 on the suit land at any point of time, learned subordinate courts committed grave error in passing the order for mandatory injunction in favour of plaintiff no. 3. Admittedly, the suit land was 'Bakast' land of Bettiah Estate, defendant 1st set which, is under the management of Courts of Wards. Further, the land under Court of Wards have been made public land by amendment in the year 1994. The plaintiffs have categorically admitted that they have purchased the land during pendency of



Title Suit No. 105 of 1981 and therefore, purchase is hit by principles of *lis pendense*. The defendant 2nd set was employee of Bettiah Estate and any transaction made by defendants 2nd set in favour of plaintiff nos. 1 and 2 was wholly illegal as defendants 2nd set were not having any right, title or possession over the suit land and for this reason, the plaintiffs cannot claim right, title and possession over the same. The vendor of plaintiff nos. 1 and 2 was a servant of Bettiah Estate and the suit land had never been let out or settled to plaintiff nos. 1 and 2 by the Bettiah Estate nor they came in its possession by way of principles of adverse possession rather the plaintiff nos. 1 and 2 admitted in compromise that they never came in possession and acquired any title over the suit land. Further, the Bettiah Estate has leased out the said land to defendant no. 4 and wife of defendant no. 5 through duly executed lease deed and in this way, the petitioner and defendant 3rd set came in physical possession of the suit land and they have constructed pucca boundary wall surrounding the suit land. The plaintiffs or any body else never came into possession of the suit land for a single moment. The possession of the land was with Bettiah Estate who had delivered the same to the petitioner and defendant 3rd set but this fact was not taken into consideration



by the learned trial court as well as appellate court. Learned counsel further submitted that the impugned orders are patently illegal as the learned trial court as well as appellate court failed to appreciate the fact that plaintiff no. 3/respondent no. 3 was not a party to the suit at the time of passing of order of injunction and the petitioner and respondent 3rd set/respondent no. 10 were also impleaded in the suit after passing of the order of injunction. Therefore, plaintiff no. 3 has no *locus standi* to pray for such reliefs especially in view of the fact that the said order has been passed even without proper enquiry regarding suit land and was passed behind back of the petitioner. Learned trial court as well as learned appellate court further failed to appreciate that ad interim mandatory injunction can be granted only in exceptional cases. Issuance of interim mandatory injunction directing possession being handed over to the plaintiff, even before deciding whether he is entitled for possession or not would mean decreeing the suit even before trial and on this score alone, the impugned order is illegal and bad. On this aspect of the matter, learned counsel for the petitioner referred to a decision of the Hon'ble Supreme Court in the case of ***Metro Marins & Anr. Vs. Bonus Watch Co. Pvt. Ltd. & Ors***, reported in ***AIR 2005 SC 1444*** wherein referring to



the case of ***Dorab Cawasji Warden Vs. Coomi Sorab Warden***, reported in ***(1990) 2 SCC 117***, the Hon'ble Supreme Court held that mandatory injunction can be granted only in exceptional cases coming within the exceptions noticed in the said judgment. Considering the facts of the case, the Hon'ble Supreme Court opined that the case of the respondent therein did not come under any of the exceptions and also held that even on facts it was not such a case which would call for the issuance of an interim mandatory injunction directing the possession being handed over to the respondent. Learned counsel further submitted that when the issue, whether plaintiff no. 3 is entitled for possession, is yet to be decided. the grant of any interim order directing handing over the possession would only mean decreeing the suit even before trial. Learned counsel next referred to a decision in the case of ***Dorab Cawasji Warden Vs. Coomi Sorab Warden***, reported in ***AIR 1990 SC 867***, wherein the Hon'ble Supreme Court held that such type of injunction has to be issued only in a case where there are exceptional circumstances and where the injury complained of irreparable and serious and likely to cause extreme hardship to the plaintiff. In the present case, the suit has been filed in the year 1995, order of injunction was passed on 27.02.2002,



alleged date of dispossession given by plaintiff no. 3 is about four years back, the evidence of the parties have been recorded and the trial of the suit is on the verge of conclusion. But both the learned courts failed to appreciate the law as well as facts which were placed before them and passed erroneous orders. Learned counsel referred to a decision of Hon'ble Supreme Court in the case of *Maharwal Khewaji Trust (Regd), Faridkot Vs. Baldev Dass*, reported in *(2004) 8 SCC 488*, 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 property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. Thus, learned counsel submitted that the impugned orders are not sustainable and the same be set aside.

4. Learned counsel appearing on behalf of respondent no. 3 vehemently contended that there is no infirmity in the impugned orders and the same need to be sustained. Learned counsel further submitted that respondent no. 3 purchased the suit land from respondent nos. 1 and 2 through registered sale deed dated 16.06.2001 and his petition for impleadment was



allowed on 27.08.2002. Admittedly, the case of the plaintiff nos. 1 and 2 was that they were in possession of the suit land and sought injunction against defendant no. 1 which was allowed and defendant no. 1 was directed not to interfere in the possession of the plaintiff nos. 1 and 2 till the suit was finally decided. The present petitioner has tried to make out a case and claim over the suit land on the basis of lease deed said to have been executed by defendant no. 1, Bettiah Estate. But the lease deed is unregistered one and got no legal value for conveying any title in their favour in view of mandate of Section 17 of Registration Act, 1908. Therefore, no right or possession has been conveyed in favour of the petitioner and respondent 3rd set. The petitioner is an encroacher over the suit land of Schedule I having no right or title. Learned counsel further submitted that despite impleadment, the present petitioner and respondent no. 10 have not been appearing in the case and a petition was filed in the court of learned Sub Judge to the extent that the order of injunction dated 27.02.2002 passed by learned Sub Judge be extended upon newly added defendant nos. 4 and 5 which was allowed vide order dated 25.08.2003. Learned counsel further submitted that it goes without saying that since the petitioner and respondent no. 10 herein claim to be lessee from defendant



no. 1, Bettiah Estate, as such any order passed against it will be binding upon the petitioner and respondent no. 10. Learned counsel further submitted that Title Suit No. 105 of 1981 was dismissed and was decreed in favour of vendors of plaintiff nos. 1 and 2 and thereafter, the vendors compromised the suit in appeal with defendant no. 1/Bettiah Estate. Therefore, the claim of plaintiff no. 3/respondent no. 3 arises from a valid title of the vendors of plaintiff nos. 1 and 2. Therefore, illegal acts of defendant/petitioner herein to dispossess the answering respondent has to be dealt with strong hands for protecting a rightful owner. In the light of these facts and circumstances, it is clear that there is no merit in the petition and the same needs to be dismissed.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record. Perusal of the impugned orders throws some interesting facts. The plaintiffs claim to have purchased the suit land from a person stated to be employee of Bettiah Estate and the Bettiah Estate has been made defendant no. 1 in Title Suit No. 44 of 1995 and the said employee compromised the matter in Title Appeal No. 33 of 1994, which was filed against the judgment and decree of Title Suit No. 105 of 1981, admitting the right and title of



Bettiah Estate over the suit property. The plaintiff, thereafter, filed the suit for declaring such compromise to be illegal and collusive and not binding upon the plaintiffs. During the pendency of the suit, plaintiff no. 3 came into picture by purchasing the suit land and seeking his impleadment which was allowed. It also transpires that petitioner and respondent no. 10 were also impleaded as defendant nos. 4 and 5 on the ground that they have been creating disturbance and obstruction in enjoyment of property by plaintiff no. 3. Further, the order of injunction was made applicable to defendant nos. 4 and 5 vide order dated 25.08.2003. Now the plaintiff no. 3/respondent no. 3 has claimed that the petitioner and respondent no. 10 have dispossessed plaintiff no. 3 and earlier prayer for police protection was rejected by the learned trial court as well as by this Court holding that the petitioner did not pray for mandatory injunction before the learned trial court and whether the petitioner has been dispossessed or not was never investigated by the learned trial court and the order of this Court was passed on 30.08.2011. Thereafter, it appears, on 04.07.2014 plaintiff no. 3 filed petition before the learned trial court for mandatory injunction and ad interim injunction over the suit land to get back possession over the suit land. Further, from perusal of the



impugned orders it appears that the learned subordinate courts have not at all recorded any finding about possession and dispossession of plaintiff no. 3. The subordinate courts relied on a report of the Circle Officer on the point of dispossession but even though referring on the report of the Circle Officer, there is no discussion about the said report. Not making the position clear about possession or dispossession of plaintiff no. 3 makes the impugned orders unsustainable. When the possession of plaintiff no. 3 is yet to be decided and his entitlement over the suit land is still under question and there is not even any discussion on respective rights of the parties, granting any interim order for directing handing over of the possession tantamount to decreeing the suit even before the trial when there is no non-contested status of the suit property. In this regard reference can be placed on the decision in the case of ***Metro Marins & Anr. Vs. Bonus Watch Co. Pvt. Ltd. & Ors*** (*supra*) is quite apt which reads as under:-

“Having considered the arguments of the learned counsel for the parties and having perused the documents produced, we are satisfied that the impugned order of the Appellate Court cannot be sustained either on facts or in law. As noticed by this Court in the case of



Dorab Cawasji Warden vs. Coomi Sorab Warden (supra) has held that an interim mandatory injunction can be granted only in exceptional cases coming within the exceptions noticed in the said judgment. In our opinion, the case of the respondent herein does not come under any one of those exceptions and even on fact it is not such a case which calls for the issuance of an interim mandatory injunction directing the possession being handed over to the respondent. As observed by the learned Single Judge the issue whether the plaintiff is entitled for possession is yet to be decided in the Trial Court and granting of any interim order directing handing over of a possession would only mean decreeing the suit even before trial. Once the possession of the appellant either directly or through his agent (caretaker) is admitted then the fact that the appellant is not using the said property for commercial purpose or not using the same for any beneficial purpose or the appellant has to pay huge amount by way of damages in the event of he losing the case or the fact that the litigation between the parties is a luxury litigation are all facts which are



irrelevant for changing the status quo in regard to possession during the pendency of the suit.”

6. Therefore, in the light of aforesaid discussion, I am of the considered opinion that the learned subordinate courts have passed the orders without sufficient reasoning and thus, the orders border on perversity and such orders cannot be sustained. Hence, the impugned orders dated 30.05.2019 and 15.06.2016 are set aside.

7. Accordingly, the present petition stands allowed.

8. However, considering the fact that the parties are before the learned trial court since 1995, the learned trial court is directed to show some urgency and dispose of Title Suit No. 44 of 1995 within six months from the date of receipt/production of a copy of this order.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	28.02.2025
Uploading Date	13.05.2025
Transmission Date	NA

