

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1382 of 2024**

Om Prakash Son of Late Ram Devan Prasad @ Ramdewan Prasad Resident of Village-Alawalpur, Manorah, P.S.-Punpun, P.O.-Punpun, District-Patna, at present residing at Punpun Bazar, P.O and P.S. Punpun, District-Patna(Bihar) Pin Code-804453.

... .. Petitioner

Versus

1. Smt. Sanjana Kumari @ Sanjana Devi Wife of Late Navin Kumar @ Navin Yadav, D/o Sri Om Prakash and Usha Devi Resident of Village- Alawalpur, Manorah, P.O and P.S.- Punpun, District- Patna (Bihar), Pin Code- 804453.
2. Juli Devi Wife of Sri Ashok Verma resident of Village- Alawalpur, Manorah, P.S and P.O.- Punpun, District-Patna, Pin Code 804453, At present Residing at present residing at Punpun Bazar, P.O and P.S.- Punpun, District-Patna(Bihar) Pin Code- 804453
3. Milli Devi Wife of Sri Ranjit Verma resident of Village- Alawalpur, Manorah, P.S and P.O.- Punpun, District-Patna, Pin Code 804453, At present Residing at present residing at Punpun Bazar, P.O and P.S.- Punpun, District-Patna(Bihar) Pin Code- 804453
4. Dolly Kumari Daughter of Sri Om Prakash resident of Village- Alawalpur, Manorah, P.S and P.O.- Punpun, District-Patna, Pin Code 804453, At present Residing at present residing at Punpun Bazar, P.O and P.S.- Punpun, District-Patna(Bihar) Pin Code- 804453
5. Archana Kumari Daughter of Sri Om Prakash resident of Village- Alawalpur, Manorah, P.S and P.O.- Punpun, District-Patna, Pin Code 804453, At present Residing at present residing at Punpun Bazar, P.O and P.S.- Punpun, District-Patna(Bihar) Pin Code- 804453
6. Aditya Kumar Son of Sri Om Prakash resident of Village- Alawalpur, Manorah, P.S and P.O.- Punpun, District-Patna, Pin Code 804453, At present Residing at present residing at Punpun Bazar, P.O and P.S.- Punpun, District-Patna(Bihar) Pin Code- 804453

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Digvijay Narayan Singh, Adv.
For the Respondent/s : Mr.

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

Date : 30-01-2025

Heard learned counsel for the petitioner and I intend
to dispose of the present petition at the stage of admission itself.



02. The present civil miscellaneous petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 21.10.2024 passed by the learned Civil Judge, Sr. Division, Masaurhi passed in Misc. Case No. 01 of 2021 arising out of Title Partition Suit No. 10 of 2020, whereby and whereunder the learned trial court vacated the order of injunction granted vide order dated 19.08.2023 against the plaintiff/respondent.

03. Learned counsel for the petitioner submits that the injunction order was granted on the application of the petitioner who has filed the miscellaneous case before the learned trial court for setting aside the *ex parte* judgment and decree passed in Title Partition Suit No. 10 of 2020 and in the misc. case it was ordered that the plaintiff shall not create right over the suit property in favour of third party by alienation or otherwise. However, there was no injunction against the petitioner for not alienating the suit property. For some exigency, the petitioner was compelled to sell a part of the suit property and the learned trial court, holding that the petitioner has violated the injunction order, vacated the order of injunction dated 19.08.2023. The said order could not be sustained as there was no order of injunction against the petitioner.



04. Learned counsel further submits that the plaintiff is the daughter of the petitioner and has filed the suit for partition and got an *ex parte* decree in her favour during the peak Covid-19 period. The Miscellaneous Case No. 01 of 2021 has been filed for setting aside the *ex parte* decree in Partition Suit No. 10 of 2020. In that miscellaneous case, injunction has been granted but the learned trial court has wrongly considered that the petitioner was equally responsible for obeying the orders of the court and he was duty bound to maintain the *status quo*, still he violated the same. Learned counsel further submits that as there has been no order against the petitioner, it was not expected the petitioner would be held responsible in case of alienation of the suit property. Therefore, the impugned order is bad in the eyes of law and fit to be set aside. Learned counsel further submits that in the said miscellaneous case, the evidence of the petitioner is complete and the matter has been coming for recording of evidence of the respondent.

05. Perused the record.

06. I have given my thoughtful consideration to the submission made behalf of the petitioner. When the learned trial court passed the order for injunction under Section 151 of the Code of Civil Procedure, the basic object for passing such order



is for preservation of the suit property. When the petitioner approached the trial court seeking injunction and the trial court directed that until the disposal of the application to set aside the *ex parte* decree and until the passing of the final decree, the plaintiff shall not create right over the suit property in favour of third party by alienation or otherwise, the same was on the apprehension of the petitioner as well as court that third party rights might be created and unnecessary complications would arise in the suit which any prudent person would like to avoid. The petitioner could not have taken advantage of the fact that there was no direction to the petitioner to maintain *status quo* as defendant and not to alienate the suit property. If the petitioner went on to transfer the part of suit land, he himself gave a death blow to the injunction order passed by the learned trial court. It is trite to remind that one who seeks equity must do equity and the learned trial court could not be faulted on this point when it vacated the order of injunction granted in favour of the petitioner finding him to be at fault for creating third party interest in the suit property. For this reason, I do not find any infirmity in the impugned order which requires interference of this Court. Hence, the impugned order dated 21.10.2024 is hereby affirmed.



07. Accordingly, the present petition stands dismissed.

08. However, the learned trial court is directed to expedite the hearing in Miscellaneous Case No. 01 of 2021 considering the fact that the said case has been filed for setting aside the *ex parte decree* and even after lapse of four years, the said case is still pending whereas the evidence of the petitioner is complete and the matter has been coming up for recording the evidence of the respondent and dispose of the same within three months from the date of receipt/production of a copy of this order.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.02.2025
Transmission Date	NA

