

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.30 of 2024**

Jawahar Lal Son of Late Sheo Nath Lal, resident of village- Sonpa, Post Office- Sonpa, Police Station- Rajpur, District - Buxar.

... .. Petitioner

Versus

Jai Prakash Lal Son of Late Sheo Nath Lal, resident of village - Sonpa, Post Office - Sonpa, Police Station - Rajpur, District - Buxar.

... .. Respondent

Appearance :

For the Petitioner/s : Mr. Parijat Saurav, Advocate
For the Respondent/s : Mr. Sanjay Kumar, Advocate

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

Date : 17-02-2025

Heard the learned counsels for the parties and I intend
to dispose of the present at the stage of admission itself.

02. The petitioner has filed the present petition
seeking following relief(s):-

“i. For setting aside the order dated 24/11/2023 passed by the court of learned Additional District Judge-IV, Buxar in Misc. Civil Appeal No. 08/2023 whereby the appeal of the petitioner against the order dated 24/03/2023 passed by the court of Sub-Judge-III, Buxar in Title Suit No. 02/2023 has been dismissed and further for setting aside the order dated 24/03/2023 passed by the court of Sub-Judge-III, Buxar in Title Suit No. 02/2023 whereby the application of the plaintiff/respondent has been allowed by the learned trial court and both the parties are directed to maintain status quo on the suit property.

ii. For issuance of any other appropriate



writ, order or direction which Your Lordships may deem fit and proper in the facts and circumstances of the case”

03. Learned counsel for the petitioner submits that the petitioner is defendant before the learned trial court and respondent is plaintiff and both are brothers. The plaintiff-respondent filed Title Suit No. 02 of 2023 seeking partition of the suit property against the defendant-petitioner and the suit property included 05 decimal of land situated at plot no. 1510 at village-Sonpa. Prior to that, the defendant-petitioner filed Title Partition Suit No. 786 of 2022 for partition by metes and bound for full coparcenary property of the family claiming 1/8th share. Title Suit No. 02 of 2023 was filed confining the claim of partition for some of the ancestral property for which averment was made that there was already a memorandum of partition dated 05.03.1996 in the family and the present partition was sought for only the property falling in share of the father of the parties. In Title Suit No. 02 of 2023, respondent filed an application under Order 39 Rule 1 of the Code of Civil Procedure, 1908 (for short ‘the Code’) praying for injunction against the petitioner. Meanwhile, the application of the respondent, filed for appointment of Pleader Commissioner, was allowed and the Pleader Commissioner submitted his report in



the court on 27.01.2023, which was objected to by the petitioner who appeared and filed his objection to the injunction petition of the respondent as well. However, learned Sub Judge-II, Buxar allowed the injunction application of the plaintiff-respondent vide order dated 24.03.2023 directing the parties to maintain *status quo* on the suit property. Against the said order, the petitioner approached the court of learned District Judge, Buxar by filing Misc. Appeal No. 08 of 2023. The miscellaneous appeal was heard and disposed of by the learned Additional District Judge-IV, Buxar vide order dated 24.11.2023 dismissing the appeal. The orders passed by the learned Sub Judge as well as learned first appellate court are under challenge before this Court.

04. Learned counsel for the petitioner further submits that the orders dated 24.03.2023 passed in Title Suit No. 02 of 2023 and 24.11.2023 passed in Misc. Appeal No. 08 of 2023 are bad in the eyes of law and are not sustainable. Learned subordinate courts failed to appreciate that no *prima facie* case for allowing *status quo* was made out as the defendant-petitioner was only making renovation and construction over the old house, no irreparable loss or injury would have been caused to the plaintiff/respondent and no balance of convenience has



been made out in favour of the respondent for granting *status quo*. The petitioner is in urgent need of house as he is not having any dwelling house to reside. Learned counsel further submits that the learned courts below did not consider the fact that on the subject matter and for the same relief, petitioner has earlier filed Title Suit No. 786 of 2022 and subsequent suit ought not to have been allowed to proceed in the light of Section 10 of the Code. Learned counsel further submits that while the respondent has been residing with his family in the ancestral house at Buxar, the petitioner is not being allowed to have a dignified place of residence in Village-Sonpa. Learned counsel further submits that the petitioner has all along been maintaining that he would not make any construction over and above 2.5 decimal land which would fall in his share in Plot No. 1510, which is in his possession. Thus, the learned counsel submits that the impugned orders are not sustainable and the same needs to be set aside.

05. On the other hand, learned counsel appearing on behalf of the respondent, vehemently contends that there is no infirmity in the impugned orders and the same are proper and correct. Learned counsel further submits that the learned appellate court has recorded its finding that when the Pleader



Commissioner visited and inspected the spot and submitted his report, the report reflected that new construction was going on total area of 87x45 feet, which was admitted by the present petitioner, who claimed that he has purchased adjoining 03 decimal land of Plot No. 1511 and has been making construction on said land as well as some area of plot no. 1510. However, the learned first appellate court calculated the total area and came to a finding that if the petitioner had been making construction over his purchased 03 decimal land plus 2.5 decimal land of his share of joint family property, only 270 square yards should have been the area of new construction but admittedly, the new construction was going on over 435 square yards which is much more than the share of the petitioner. Learned counsel further submits that, in fact, the petitioner was making construction over full 05 decimal area of land, which is joint family property of parties, which is yet to be partitioned. The petitioner wants to completely oust the respondent from his share of joint family property. Learned counsel further submits that learned subordinate courts have considered all the facts and passed valid and legal orders. Learned counsel further submits that the suit property is required to be preserved till the disposal of the *lis* and this fact was taken into consideration by the learned



subordinate courts. Learned counsel further submits that even though the petitioner has filed Title Suit No. 786 of 2022, he did not seek leave of the court for making construction over the suit land and started the construction unilaterally. Learned counsel also submits that the petitioner has been playing victim card and age difference between the brothers is only two years and both of them had been working in Bokaro from where they have returned to their native place after retirement. Thus, the learned counsel submits that there is no infirmity in the impugned orders and the same do not require any interference.

06. I have given my thoughtful consideration to the rival contentions of the parties and perused the record.

07. The perusal of record makes it clear that there is concurrent findings by two subordinate courts and the petitioner has failed to show any perversity in the orders of either the first appellate court or the court of learned Sub Judge. It is settled principle of law unless some glaring mistake or perversity is present in the orders of the learned subordinate courts while granting injunction or refusing it, this Court would refrain from interfering with concurrent findings of the subordinate courts. Moreover, in the case of *Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Das*, reported in (2004) 8 SCC 488, the



Hon’ble Supreme Court has held that the *lis* property is to be preserved till the disposal of the suit so that it is available when the suit is decided. Otherwise, the decree would become barren and the whole process would become a fruitless exercise. Both the orders of the learned subordinate courts are only to the effect that parties should maintain status quo and thus have been passed for preservation of the suit property.

08. In the light of aforesaid discussion, I do not find any reason to interfere with the impugned order. Hence, the order dated 24.11.2023 passed by the court of learned Additional District Judge-IV, Buxar in Misc. Civil Appeal No. 08/2023 and the order dated 24.03.2023 passed by the court of Sub-Judge-III, Buxar in Title Suit No. 02/2023 are hereby affirmed.

09. Accordingly, the present Civil Misc. petition stands dismissed being devoid of merit.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.02.2025
Transmission Date	NA

