

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.816 of 2023

1. Suresh Singh @ Suresh Kumar Singh Son of Late Hari Shankar Singh Resident of Village- Ayer, P.S.- Ayer, District- Bhojpur.
2. Manish Singh @ Manish Kumar Singh, S/o Late Hari Shankar Singh Resident of Village- Ayer, P.S.- Ayer, District- Bhojpur.
3. Ramesh Singh @ Ramesh Kumar Singh, Son of Late Hari Shankar Singh Resident of Village- Ayer, P.S.- Ayer, District- Bhojpur.
4. Jayanti Devi @ Jayanti Singh, W/o Ramesh Kumar Singh Resident of Village- Ayer, P.S.- Ayer, District- Bhojpur.
5. Shail Kumari Devi, W/o Late Raja Shankar Singh Resident of Village- Ayer, P.S.- Ayer, District- Bhojpur.

... .. Petitioner/s

Versus

1. Surendra Singh Son of Late Hari Shankar Singh Resident of Village- Ayer, P.S.- Ayer, District- Bhojpur.
2. Dinesh Singh S/o Late Hari Shankar Singh, R/o - Vill. - Ayer, P.S. - Ayer, Distt. - Bhojpur.

... .. Respondent/s

with

CIVIL MISCELLANEOUS JURISDICTION No. 814 of 2023

1. Suresh Singh @ Suresh Kumar Singh Son of Late hari Shankar Singh Resident of Village-Ayer, P.S.-Ayer, District-Bhojpur.
2. Manish Singh @ Manish Kumar Singh S/o Late hari Shankar Singh Resident of Village-Ayer, P.S.-Ayer, District-Bhojpur.
3. Ramesh Singh @ Ramesh Kumar Singh Son of Late Hari Shankar Singh Resident of Village-Ayer, P.S.-Ayer, District-Bhojpur.
4. Jayanti Devi @ Jayanti Singh W/o Ramesh Kumar Singh Resident of Village-Ayer, P.S.-Ayer, District-Bhojpur.
5. Shail Kumari Devi W/o Late Raja Shankar Singh Resident of Village-Ayer, P.S.-Ayer, District-Bhojpur.

... .. Petitioner/s

Versus

1. Surendra Singh Son of Late Hari Shankar Singh Resident of Village-Ayer, P.S.-Ayer, District-Bhojpur.
2. Dinesh Singh S/o Late Hari Shankar Singh, R/o Vill. - Ayer, P.S. - Ayer, Distt. - Bhojpur.

... .. Respondent/s



Appearance :

(In CIVIL MISCELLANEOUS JURISDICTION No. 816 of 2023)

For the Petitioner/s : Mr.Sunil Kumar Yadav, Advocate

For the Respondent/s : Mr.Sunil Kumar, Advocate

(In CIVIL MISCELLANEOUS JURISDICTION No. 814 of 2023)

For the Petitioner/s : Mr.Sunil Kumar Yadav, Advocate

For the Respondent/s : Mr.Sunil Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT

Date : 16-07-2026

RE: Civil Miscellaneous Jurisdiction No. 816 of 2023

Heard learned counsel for the petitioner and learned counsel for the respondent.

2. The instant application has been filed on behalf of the petitioner for setting aside the judgment dated 20.06.2023 passed by learned Additional District Judge 13th Bhojpur at Ara in Miscellaneous Appeal No. 29 of 2021 whereby and whereunder he partly allowed the M.A. during pendency of the Title Suit No. 135 of 2018 deciding 1/5th share in the property although M.A. preferred against the order dated 22.10.2021 along with order dated 02.01.2019 passed by learned Sub-judge Jagdishpur, Bhojpur whereby and whereunder petition filed under order 39 Rule 1 and 2 of the CPC has been dismissed.

3. Learned counsel for the petitioners submits that plaintiff-respondent filed a Title Suit No. 135 of 2018 with a prayer for carving out his share to the extent of 1/5th in the suit



land described in schedule I and II of the plaint along with other ancillary relief.

4. Admittedly, suit property is the maternal property of plaintiff and defendants both because all are the legal heirs of late Annapurna Devi and the suit property belongs to ancestor of Annapurna Devi. Annapurna Devi said to have been died in the year 2011 leaving behind her legal heirs who are plaintiff and defendants in the aforesaid suit. In the aforesaid suit, plaintiff is Surendra Singh, one of the son of said Annapurna Devi. Plaintiff-respondent filed a petition during course of trial for grant of injunction under Order 39 Rule 1 & 2 of CPC read with Section 151 of CPC in which after hearing the parties an order was passed to maintain *status quo*.

5. Subsequently, a petition dated 16.11.2021 was filed on behalf of defendant to stay the aforesaid order of injunction on which an order was passed on 22.11.2021. By that order the aforesaid petition was dismissed. Being aggrieved with the said order, defendant-petitioner filed a Miscellaneous Appeal No. 29 of 2021 before the Court of learned 13th Additional District Judge, Bhojpur at Ara in which the Appellate Court has held that the defendant nos. 1-4 are directed that they shall not disturb the plaintiff-respondent no. 1 in any way from cultivating 1/5th



portion of the land of Schedule-I of the plaint till passing of final order with respect to disputed land, upon which the plaintiff was claiming to be in cultivating possession and they were allegedly dispossessing the plaintiff from that land and were allegedly bent upon to reap the paddy crop planted by the plaintiff upon that land.

6. From perusal of the injunction petition filed on behalf of the plaintiff–respondent, i.e., Annexure P/3, it appears that the prayer for injunction has been made against the defendant with respect to the entire suit property described as Jamima No. 1. However, in the relief clause of the plaint, the plaintiff–respondent has claimed only a 1/5th share in Jamima Nos. 1 and 2. The Trial Court has not passed any specific order confined to the said 1/5th share in Jamima No. 1; rather, it appears that an order of status quo has been directed with respect to the entire property.

7. Learned counsel for the petitioner submits that the petitioner has grown and planted paddy crops over the suit land, which were ready for harvesting, but they were being destroyed on account of the impugned order. It is further submitted that, in lieu of the suit property, the plaintiff has already been allotted alternative land by their mother in Uttar Pradesh, as mentioned in the written statement. It is also contended that, in a private partition, the father of the plaintiff and the defendants, namely



Harishankar Singh, had allotted 8 acres of land to the plaintiff, while the suit property fell to the share of the defendants, who are in possession thereof and have been cultivating the same.

8. Upon perusal of the impugned order, it appears that the three essential requirements for grant of injunction, namely *prima facie* case, irreparable loss, and balance of convenience, have not been considered or adjudicated in the above case. Moreover, the question as to who has actually cultivated the crop in question has also not been examined, and several material facts remain to be considered. Without addressing these aspects, the impugned order has been passed while both parties are admittedly co-sharers, being full brother.

9. In view of the aforesaid, the impugned order is set aside, and the matter is remanded to the appellate Court for fresh consideration in accordance with law.

10. Accordingly, the Civil Miscellaneous Jurisdiction No. 816 of 2023 stands disposed of.

RE: Civil Miscellaneous Jurisdiction No. 814 of 2023

Heard learned counsel for both the parties

2. The instant application has been filed by the petitioner for quashing the order dated 17.01.2023 passed by learned Additional District Judge-13, Bhojpur, Ara in Misc. Appeal No. 29



of 2021 whereby and whereunder order dated 02.01.2019 passed by Sub-Judge I, Jagdishpur, Bhojpur in Title Suit No. 135 of 2018 has been partly dismissed.

3. Learned counsel for the petitioner submits that petitioner is plaintiff in Title Suit No. 135 of 2018 and defendant-appellant has filed Civil Miscellaneous Appeal No. 29 of 2021 against the order of injunction passed in his favour. He submits that on 20.10.2022 he has filed a petition in Miscellaneous Appeal No. 29 of 2021 that the miscellaneous appeal is not maintainable because it is barred by limitation since the injunction order was passed on 02.01.2019 and against that order appeal has not been filed within the prescribed time. He also submits that appellant Suresh Singh has also filed a review petition with respect to aforesaid injunction order dated 02.01.2019 which was also dismissed on 22.11.2021 and Suresh Singh (appellant) has filed miscellaneous appeal which is not maintainable since it is barred by limitation.

4. After hearing both the parties the learned Trial Court has held that so far as injunction has been passed on 02.01.2019 hence the above Miscellaneous Appeal No. 29 of 2021 was barred by limitation but so far as the appeal preferred against order dated 22.11.2021 is concerned, it is not barred by limitation and it is



maintainable. Lastly, it is held by the Appellate Court that aforesaid order dated 22.11.2021 is with regard to stay of operation of injunction order which was sent for implementation vide letter dated 29.10.2021 by the court also and consequently the appellate court held that it was partially maintainable and accordingly the petition dated 20.10.2022 has been disposed of by the appellate Court.

5. In view of the decision rendered in Civil Miscellaneous Jurisdiction No. 816 of 2023, it is not necessary to examine the aforesaid issue afresh. The issue involved in this case has become infructuous inasmuch as the entire matter has already been remanded to the appellate court for fresh consideration in accordance with law. Therefore, no specific finding is required to be recorded in the present Civil Miscellaneous proceeding in view of the order passed in Civil Miscellaneous No. 816 of 2023.

6. Accordingly, the present matter stands disposed of.

(S. B. Pd. Singh, J)

Ankit Kumar/-

AFR/NAFR	AFR
CAV DATE	04.05.2026
Uploading Date	16.07.2026
Transmission Date	16.07.2026

