

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2829 of 2017

Arising Out of PS. Case No.- Year-1111 Thana- District-

1. Joytirmayee Samta Singh W/o Col. S.K. Singh,
2. Joytirmayee Mamta Singh W/o Jai Shankar Prasad Singh,
both R/o Mohall- Rajendra Nagar, P.S.- Kadamkuan, District- Patna.
... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department,
Government of Bihar, Patna.
2. The Divisional Commissioner, Patna.
3. The District Magistrate, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Deputy Superintendent of Police, Sadar, Patna.
6. The Sub Divisional Officer, Sadar, Patna.
7. The Officer In Charge SHO, Kankarbag, P.S., Patna.
8. Umesh Kumar Yadav S/o Ramdeo Yadav, R/o Village- Kamarpokhar, P.S.-
Baheri, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Singh, Adv.
For the Respondent/s	:	Mr. Sheo Shankar Prasad, APP
For the Res. No. 8	:	Mr. Mr. J.K. Verma, Adv.
		Mr. Anjani Kumar, Adv.
		Mr. Ravi Raj, Adv.
		Mr. Abhishek Kumar Srivastava, Adv.
		Mr. Achyut Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 16-09-2025

In the instant petition, the petitioners have
prayed for following relief(s):-

*“i) For issuance of mandamus directing the
respondents to take legal action against
Respondent No. 8 restraining him from
forcefully dispossessing these petitioners
and undertaking any illegal construction
work on Raiytee land of the petitioners
upon which they are in peacefully
possession for last thirty eight years.*



- ii) For a direction upon respondent No. 7 to immediately make recommendation for initiation of 144 Cr. P. C. proceeding over the land and restrain the parties from going forum over the same so that peace & tranquility could be maintained.*
- iii) For further direction for respondent authorities to provide protection to the petitioners so that their land over which they have got perfect right, title and possession and confirmed by judgment and decree dated 16.3.2011 passed by the Civil Court, Patna, could be saved from illegal dispossession at the hands of respondent no. 8 (Umesh Kumar Yadav) who was got no right, title, interest over the land in question.*
- iv) For any other relief and reliefs for which the petitioners are found entitled in the facts and circumstances of the case.”*

2. Learned counsel for the petitioners submits that the land appertaining to Plot No. 246, Khata No. 74, Tauji No. 173 C, Survey Thana No. 25 Phulwari Sarif, Mauza-Shahbudin Pakari (Dusadhi Pakari) belong to the petitioners and they have jointly acquired the said land through registered sale deed in the year 1976. He further submits that civil suit was filed in T.S. No. 74 of 1996 in the Court of Sub Judge, Patna which was decided in favour of the petitioners by virtue of judgment dated 16.03.2011. He further submits that during pendency of the suit Maheshwar Singh executed sale deed to Umesh Kumar Yadav



(respondent no.8) on 24.12.2002 and on the basis of said execution of sale deed Umesh Kumar Yadav (respondent no.8) is creating disturbance and trying to take forceful possession over the land in question though, the vendor has no title. He further submits that by virtue of judgment dated 16.03.2011 Maheshwar Singh has no title over the land in question and respondent no.8 thereby being a vendee has no right, title over the land in question. Learned counsel for the petitioners further submits that the petitioners have limited grievance that respondent no.8 be restrained from forcefully dispossessing the petitioners. He further submits that the petitioners have right, title and possession by virtue of judgment dated 16.03.2011 and petitioner is totally protected by the said judgment and no one, more particularly, respondent no.8 cannot dispossess the petitioners from the land in question.

3. Learned counsel for respondent no.8 as well as learned counsel for the State submits that both parties have admitted that land in question which is part and parcel of the dispute in present writ and the judgment dated 16.03.2021 passed in the aforesaid Title Suit No.74/1996 has been challenged before the Court of learned District Judge, Patna



and the Title Appeal No. 53/2011 is pending over the same land. Learned counsel for the State submits that the present matter is rightly been covered by the Competent Civil Court where the appeal is pending. In the light of aforesaid facts and circumstances of the case, the present writ is not maintainable.

4. The question arises for consideration is,

“If the dispute with regard to title over the land in question is pending before the Competent Court, whether writ court has jurisdiction to pass any order?”

In the present case, the petitioners have also admitted that dispute with regard to title over the land in question is pending at the appellate stage. Learned counsel for the petitioner is, however, differing on the point that the respondent no. 8 who is not party to the appeal, is creating hindrance. He submits that the right, title of respondent no. 8 is mere a nullity as during the pendency of the suit, he has purchased the property in the year 2002 and his vendor has already lost the suit in 2011. So far as the writ jurisdiction is concerned, it is evident from assertion made by the petitioners' counsel itself that he admits that the right, title and possession of the land in question and the said appeal



over the land in question has not been finally decided and the same is pending at the appellate stage and the petitioners' counsel has submitted that respondent no. 8 is not a party but the vendor is already a party to the appeal and the fact speaks itself that whenever the matter of title over the land in question is not finally decided by the appropriate court, the writ court cannot decide through the summary procedure as to whom the title vests.

5. The Hon'ble Supreme Court in *catena* of judgments has held that regular suit is appropriate remedy for settlement of dispute relating to property rights between private persons. The remedy under Article 226 of the Constitution shall not be available except where there is violation of some statutory duty on the part of statutory authority is alleged. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. The jurisdiction under Article 226 of the Constitution being special and extra-ordinary should not be exercised casually or lightly on mere asking by the litigant. In this context, the decision of the Hon'ble Supreme Court in the case of ***Sohan Lal Vs. Union of India & Anr.***



reported in ***AIR 1957 SC 529*** and in the case of Radhey Shyam & Anr. Vs. Chhabi Nath and Ors, reported in (2015) SCC 423 are quite relevant.

6. In the case of ***Sohan Lal (supra)***, Hon'ble Supreme Court has observed as under :

“We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. These are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Art. 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.”

7. In the case of ***Radhey Shyam (supra)***, Hon'ble Supreme Court in paragraphs 64 and 65 has observed as under :

“64. However, this Court unfortunately discerns that of late there is growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in case of dispute



between landlord and tenant and also in a case of money decree and in various other cases where disputed question of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.”

8. In the light of the discussion made above, the disputed aspect with respect to the title over the land cannot be decided in writ jurisdiction and the appropriate remedy, in the facts and circumstances of the case, is before the Civil Court.

9. Accordingly, the writ petition stands dismissed.

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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