

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.727 of 2018

1. Surendra Prasad S/o Late Saudagar Prasad,
2. Geeta Devi, W/o Late Upendra Prasad,
3. Sangeeta Devi, D/o Late Upendra Prasad

All Residents of Village- Chak Hussain, Populary known as Khusrupur, P.S.
and P.O.- Khusrupur, District- Patna.

... .. Plaintiffs/Appellant/s

Versus

1. Most. Tetari Devi W/o Late Chamru Mahto,
2. Dinesh Mahto, S/o Late Chamru Mahto,

Both Residents of Village- Chhoti Nawada, P.S. and P.O. Khusrupur,
District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bal Bhushan Choudhary, Adv Mr. Raj Kishore Prasad Singh, Adv
For the Respondent/s : Mr. R.C. Sinha, Adv, Mr. Shashi chandra Pandey, Adv Mr. Awadhesh Kumar Singh Tarun, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 22-04-2019

Heard parties.

2. This miscellaneous appeal has been filed for setting aside the order dated 14.06.2018 passed in T.S. No. 232 of 2013 by learned Sub-Judge-IV, Patna City, Patna, by which petition for injunction dated 03.08.2017 filed on behalf of



defendant/respondents, has been allowed.

3. Plaintiff-appellants have filed title suit for declaration of their right, title and possession over the suit land as well as permanent injunction against defendant in interfering with their peaceful possession over the suit land and also to restrain them from alienating suit land as described in Schedule 1 and 2 of the plaint.

4. Plaintiffs claim is that they are descendants of Shanichar Mahto who was in joint possession of the suit property with his brother Narayan Mahto and same was entered in the record of rights of last cadastral survey. Schedule-1 land are the ancestral land whereas Schedule-2 land are purchased by plaintiff. It has been further stated that Narayan Mahto was married with Most. Genda Kuer d/o Tilak Mahto, who died issueless and Sanichar Mahto succeeded to entire joint property by survivorship and remained in possession of entire joint family property having undisputed title over the joint family property.

5. Plaintiff-appellants are descendants of said Sanichar Mahto and are in peaceful possession over the entire land by inheritance and survivorship. A land ceiling proceeding was initiated against Saudagar Prasad with respect to Schedule-1 and



Schedule-2 properties standing in the name of Most. Genda Kuer and Saudagar Prasad in Register-2 and same was decided by order dated 25.07.1975, according to which Schedule-1 and Schedule-2 lands are owned and possessed by Saudagar Prasad. Saudagar Prasad died in the year 1993 leaving behind his two sons Surendra Prasad and Upendra Prasad who were plaintiffs, who inherited Schedule-1 and Schedule-2 lands. Plaintiffs filed Mutation Case No. 1173 of 2012 before Circle Officer, Khusrupur, Patna, in which defendants filed objection and after hearing both the parties Circle Officer, allowed the mutation of plaintiffs and rent receipts were issued vide Jamabandi Number-247.

6. The defendants case is that Narayan Mahto died leaving behind a daughter Genda Kuer and Rupiya Devi was wife of Narayan Mahto. Genda Kuer was married to Tilak Mahto from whom she had two sons Jagdeep Mahto and Prayag Mahto. Jagdeep Mahto died unmarried and issueless. Prayag Mahto was married to Janki Devi @ Kudri and one son Chamru Mahto was born. Chamru Mahto was married to Tetri Devi (defendant no. 1) and Dinesh Mahto (defendant no. 2), is the son and Geeta Devi and Sita Devi are daughters of late. Chamru Mahto. It is further alleged that Saudagar Prasad obtained order



in land ceiling proceeding without making Genda Kuer as a party and same was collusive and not binding upon heirs of Genda Kuer. Saudagar Prasad father of plaintiffs had only half share and remaining half shares belong to legal heirs of Genda Kuer, who are defendants. The Circle Officer, had wrongly mutated the name of plaintiff in mutation case.

7. Narayan Mahto and Sanichar Mahto were brothers who were allotted half share each on partition of suit properties and half fell in the share of Narayan Mahto and he died leaving behind her daughter Genda Kuer who came in possession and her name was recorded in Register-2 under Jamabandi number-76/Ka and paid rent.

8. It has been submitted on behalf of the plaintiff-appellants that even assuming the case of the defendants to be true as disclosed in their written statement, according to the case of defendants after death of Genda Kuer who was in joint possession with Sanichar Mahto, as such no joint property she could have got by inheritance either being widow or daughter of Narayan Mahto and could not have succeeded to the property. The defendants have further stated that they are not in cultivating possession of the land and they have given the land on Bataidari for last 10 years.



9. The defendants have filed an application for injunction under Order XXXIX Rule 1 & 2 and Section 151 of C.P.C on 03.08.2017, to restrain the plaintiff-appellants from doing any act of filling the earth over the suit land or making any kind of construction over the same or any alienation or encumbrance over the suit property till disposal of the suit which has been allowed by the impugned order.

10. Order XXXIX Rule 1 & 2 of CPC reads as follows:-

1. Cases in which temporary injunction may be granted—

Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree,

or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach—

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in



the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right. (2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

11. From reading of the provision, it is apparent that generally petition for grant of injunction is acceptable on behalf of plaintiffs only except cases under sub clause-(i) where provision is made that injunction petition can be entertained on behalf of either of the parties. Injunction petition on behalf of defendant is maintainable only under conditions as disclosed under sub clause (i).

12. It has been further submitted on behalf of the plaintiff-appellants that letter of intent has been issued to Abhishek Kumar by the company and he has deposited Rs. 2,30,000/- for opening of retail outlet of Bharat Petroleum Corporation. The land selected appertained to suit plot no. 116 and 40 and also have the permission of the State Govt. for conversion of user of agricultural land as commercial land on payment of Rs. 2,69,703.00/- as conversion fee and the oil company has accepted the proposal of Abhishek Kumar for



opening retail outlet on the suit plot no. 116 and 40, and if same is not permitted to be established he will suffer irreparable loss and balance of convenience is also in his favour and even the claim of the defendants is accepted they claim half share in joint family property.

13. Accordingly on the land on which the petrol pump is being established by the plaintiff-appellants is exempted from operation of impugned order and plaintiff-appellants are permitted to construct the petrol pump, as far as other other suit property is concerned, the order passed by the trial court requires no interference.

The miscellaneous appeal is allowed to the extent as indicated above.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.04.2019
Transmission Date	26.04.2019

