

## **In the court of SubJudge, Bakhri**

**T S 21/2016**

### **INJUNCTION ORDER**

12.09.2022- Hajiri on behalf of all the sides have been filed. Case record is produced, after hearing all the parties, for passing order on petition, dated 14th of June 2022 under order 39 Rule 1 and Section 151 of the Civil Procedure Code, of the plaintiff and rejoiner on it filed by defendant first party dated 16<sup>th</sup> of July 2022.

Learned Counsel for the petitioner-plaintiff has submitted that this is a declaratory suit and case record is running for plaintiff's evidences. Further he stated that, during pendency of the suit defendant is doing some construction work at the suit land and trying to change the nature of it and dispossess the plaintiff. In this way, defendant by his illegal activities trying to inflict irreparable loss to the plaintiff. It is therefore, prayed that defendants may be restrained from disturbing peaceful possession of plaintiff and an injunction order may be passed against the defendants.

In reply to the petition filed by the plaintiff, learned Counsel for the defendants has submitted that, all the averments made by plaintiff are totally wrong and in fact defendants are in possession over the suit land and they are not trying to dispossess the plaintiff. He stated that defendants are in possession since the date of purchase of the suit land and prior to that defendant first party, that is vendor, were in continuing possession over the suit land with perfect right and title. In fact, plaintiff is trying to harass the defendants by prohibiting them from completing their construction of house. It is therefore, prayed that injunction petition filed by plaintiff may be dismissed.

After hearing all the parties, perused the case record. Plaintiff in his plaint has stated that, after the death of recorded tenant Nakat Raut issueless in 1907 Malik of the Tauji Shivdhyan Singh settled land with Ramdhani Gope and Kari Gope, who failed to pay taxes. Hence, Malik, son of Shivdhyan Singh, Babu Jagat Narayan alias Bacha Babu filed a Rent-fixation case against them numbering 1478/ 1926 in the court of Munsif Begusarai in

which defendants were ordered to pay the rent with cost. Malik issued rent receipt to Ramdhani Gope. After death of Kari Gope (issueless) Ramdhani Gope inherited entire property. After vesting of zamindari in State of Bihar, Jamabandi number 47 was created in the name of Ramdhani Gope and he used to pay rent. Ramdhani Gope is ancestor of plaintiff. Further he stated that, plaintiff constructed three rooms and Ladder on the suit land. He stated that daughter-in-law of defendant number 3, Rajkumari Devi, complained before SDM who started proceeding under section 144 of the Criminal Procedure Code. He further stated that her husband purchased the suit land through registered sale deed dated 5<sup>th</sup> of April 2004 executed by Shiv Shankar Yadav in favour of her husband Rajendra Yadav and an another person Ram ujar Yadav. According to plaintiff afore referred sale deeds are false. Plaintiff relies upon: firstly, order passed in Rent Fixation case no. 1478/1926 secondly, Malkana rent receipt and thirdly, Government rent receipts.

In their written statement defendants have stated that, it is true that recorded tenant of the suit land was Nakat Raut but it is not correct that after the death of Nakat Raut, Issueless, land became abandoned, rather it devolved to Nakat Raut's cousin brothers Bhatu Raut and Chai Raut who are ancestors of defendants. Later on Bhatu Raut and Chai Raut partitioned their property and suit land fell in the share of Chai Raut. Chai Raut died leaving behind his only son Babulal Raut and later died leaving behind his two sons namely, Raudi Yadav and Ramcharan Yadav. In partition, the suit land came in the exclusive share of Ramcharan Yadav and husband of defendant no. 1 Most. Rajkumari Devi has purchased the suit land from the son of Ramcharan Yadav namely Shivshankar Yadav defendant no. 4. As per para 16 of the written statement, descendants of Raudy Yadav and Ram Charan Yadav themselves sold some of the lands of their shares and purchasers are in peaceful possession over the purchased land. In support of which photocopies of sale deeds have been filed. Further, it has been stated that suit land was purchased by late Rajendra Yadav who was husband of defendant no. 1 Rajkumari Devi from Shiv Shankar Yadav s/o late Ramcharan Yadav through registered Sale deed dated 5<sup>th</sup> of April 2004.

Learned Counsel for the defendant has categorically denied any Jamabandi in the name of plaintiff. He further stated

that, it is not the defendants who are disturbing the plaintiff but the plaintiff is disturbing the construction work of the defendants owing to which SDM had initiated the proceeding under section 144 of The Criminal Procedure Code.

While deciding temporary injunction petition, three cardinal principles to be considered for grant or refusal of temporary injunction are:

- (i) a strong prima-facie case,
- (ii) the balance of convenience and
- (iii) irreparable loss and injury.

Ordinarily in deciding a petition for temporary injunction it must be up to satisfaction that (a) whether a strong prima-facie case, (b) the balance of convenience is in petitioner's favour ? i.e. it would cause greater inconvenience to petitioner if the injunction is not granted than the inconvenience which the opposite party or the persons claiming through the opposite Party would suffer if temporary injunction is granted and (c) whether the petitioner would suffer irreparable loss and injury.

It would be better to examine the facts of this case on touch-stone of three cardinal parameters to be considered for grant or refusal of temporary injunction:

a) Prima-facie case:

It has been put forward on behalf of the defendants that, the suit land was purchased by the husband of the defendant no.1 through a registered sale deed from Shivshankar Yadav who was descendant of the recorded tenant. Further, it has been variously held by the Supreme Court that there is a prima-facie presumption of genuineness in favor of a registered sale deed. In addition to this, contrary to the assertion of the plaintiff that after the death of the recorded tenant Nakat Raut suit land became abandoned; it has been submitted by ld. advocate for the defendants that after the death of the recorded tenant Nakat Raut suit land devolved to his cousin brothers Bhatu Raut and Chai Raut and in support of his statement he has produced a genealogical table issued by Gram-Katchehri. From going through the foregoing averments made by the parties and

discussions made, it cannot be said, at this stage of the suit, that there is prima-facie case in favour of the petitioner-plaintiff.

b) Balance of convenience:

In para 14 of his plaint, plaintiff has stated that he had constructed three rooms up to roof and a ladder in 2015. In the same way, defendants in their written statement, vide para 18 filed in the year 2017, has stated that they have constructed their pucca residential house on the suit land which is going to be completed. Furthermore, defendant 1st party is purchaser of the suit land for value. In the circumstances, if injunction is granted it would lead to more inconvenience to the defendants than the convenience to the plaintiff.

c) Irreparable loss:

It is one which can't be compensated in monetary terms, but in the case at hand if any loss occasioned it may be compensated in the terms of money. Furthermore, if a decree in favour of petitioner-plaintiff is passed, the house constructed by the defendant may be demolished through an order of mandatory injunction. In the circumstances, it can't be said that a refusal to grant the temporary injunction will lead to irreparable loss to the petitioner-plaintiff.

Considering the foregoing discussions where, in favour of the petitioner-plaintiff at this stage of the suit, there is neither prima-facie case nor balance of convenience and they shall not be put into any irreparable loss if injunction is not granted; the petition, dated 14.06.2022, filed by the plaintiff is hereby rejected.

Put up case record on 22.11.2022 for plaintiff evidences.

Sub-Judge  
Bakhri