

Election 02 of 2021

Arun Kumar SinghPetitioner

V/S

Narottam Kumar Singh and Others.....Respondents

12.01.2023. Attendance filed on behalf of Petitioner and Defendant no. 1, 2, 4 and 6. Today the record is put up for order on petition dated 10 August 2022 filed on behalf of the Respondent No.-1 under Order 6 Rule 16 along with Order-7 Rule-11(A) of the Code of Civil Procedure and its rejoinder dated 06 September 2022.

The application on behalf of Respondent no., 1 is for dismissal of election petition by this Court in exercise of its power under Order 6, R-16 read with Order-7 R-11 (A) of the Code of Civil Procedure on the ground that the pleadings of the election petition does not constitute a triable issue under Section 139 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act.). The provisions contained under Section 139 of the Gram Panchayat Act confer power upon this Court to declare the election of returned candidate void if after holding trial of an election petition, the prescribed Authority is of the opinion that any ground as specified in Sub-Section-1 of Section-139 of the Gram Panchayat Act has been proved. For ready reference, the provisions of Section 139 of the Gram Panchayat Act is being quoted hereunder:- 139- Grounds for declaration election to be void-(1) Subject to the provisions of sub-section (2) if the prescribed authority is of opinion-

- (a) that on the date of his election, a return candidate was not qualified or was disqualified, to be chosen as a member under this Act: or
- (b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate of his agent; or
- (c) that any nomination paper has been improperly rejected; or
- (d) that the result of the election , in so far as it concerns a returned candidate, has been materially affected-
 - (i) by the improper acceptance of any nomination; or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent; or

Election 02 of 2021

- (iii) by the improper reception, refusal or rejection of any vote of reception of any vote which is void; or
- (iv) by any non-compliance with the provisions of this Act or of any Rules of orders made there under, the prescribed authority shall declare the election of the returned candidate to be void.

If in the opinion of the Prescribed Authority, any agent of a returned candidate has been guilty of any corrupt practice, but the prescribed authority is satisfied-

- (a) that no such corrupt practice was committed at the election by the candidate and every such corrupt practice was committed contrary to the orders and without the consent of the candidate;
- (b) that the candidate took all reasonable measures for preventing the commission of corrupt practice at the election; and
- (c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agent; then the Prescribed Authority may decide that the election of the returned candidate is not void.

Beyond the provisions contained under Section 139 of the Gram Panchayat Act, there is no other provision enabling this court to declare the election of returned candidate void. In the circumstances, in order to maintain the election petition, challenging the election of returned candidate, the election petitioner is obliged to plead, adequate material facts in his election petition which gives a genuine cause of action as contemplated under Section 139 of the Gram Panchayat Act. In other words if the pleadings of an election petition does not constitute of the grounds as contemplated under Section 139 of the Gram Panchayat Act, such election petition are fit to be dismissed at the threshold since it is a trite law that a party cannot be permitted to adduce the evidence beyond the pleadings. in the instant election petition, the election petitioner has challenged the election of deponent on the the ground that:-

Election 02 of 2021

- (A) The candidates were not allowed for appointment of their polling Agents, on the date of election which resulted in cast of vote in the name of dead voters and the detail of dead voters has been given in Schedule-I
- (B) The name of one voter was mentioned at two places in the voter list and he had exercised his right to vote twice in favour of deponent, the details whereof has been set out in Schedule-II
- (C) The candidates were allowed for appointment of only one counting Agent for the purpose of counting.
- (D) Illegalities were committed in counting of votes in Booth Nos. 68,69 and 70; and
- (E) Application for recounting was refused to be received by the Returning Officer in respect whereof information was given to the Sub-Divisional Officer, Sonapur, Collector, Saran and State Election Commission.

From the pleadings made in the election petition, it appears that the election petitioner has made his attempts to challenge the election of deponent on the ground of improper reception of void votes by the deponent and non-compliance with the provisions of the Act and Rules or the order made there under as contemplated under Section 139(1)(d)(iii) and (iv) of the Gram Panchayat Act.

In Schedule-II appended with the election petition, the election petitioner has set out the name of four voters said to be dead and it has been further averred that on the date of election vote was also polled in their name but there is no pleading in the election petition that four votes in the name of dead voters was polled in favour of deponent. It is stated on behalf of the deponent that out of four voters said to be dead, two namely Shail Devi wife of Shiv Kumar Singh and Surendra Singh son of Hirday Narayan Singh are still alive and, therefore, the election petition deserves to be dismissed on the ground that the election petitioner has not approached this Hon'ble Court with clean hands. In Schedule-II of the election petition, the election petitioner has set out the name of five voters which name was mentioned at two different places in the voter list however he has failed to provide the serial number at least one voter Pappu Kumar Singh son of Nand Kishore

Election 02 of 2021

Singh in his election petition. From Schedule-II of the election petition, it is not at all clear that what is this first voter list and second voter list. The Schedule is, therefore, vague and cannot be relied upon. third ground of the election petitioner is that he was not allowed for appointment of Polling Agent on the date of election and on the date of counting he was allowed for appointment of only one Counting Agent, however, there is no pleading in the election petition at all that as to how the irregularities or illegalities alleged on the date of election or on date of counting has materially affected the result of election. Assuming not admitting that two votes in the name of two dead voters was polled in favour of deponent, since the difference between the deponent and the election petitioner is of seven votes yet there are five votes for which the deponent would be declared elected in the impugned election. The statements made in paragraph no. 8 of the election petition read with Schedule-II are so vague that no prudent person can understand the pleading of election petition for the purposes of its reply. The deponent would like to draw the attention of this Court to Schedule-II of the election petition in which the election petitioner has mentioned about the first voter list and second voter list of Ward Nos., 12 and 6. There cannot be two voter list in the election i.e. the first voter list and second voter list. There can be a case where the name of one voter could appear in two places in the same voter list, however the existence of first and second voter list is beyond imagination. Section 139 (1) 9d) of the Gram Panchayat Act provides that subject to the provisions of Sub-Section-2, if the prescribed Authorities is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected.(i)xxxxxxxxxxxxxxx (ii)xxxxxxxxxxxxxxx (iii) by the improper reception, refusal or rejection of any vote of reception of any vote which is void; or (iv) by any non-compliance with the provisions of this Act or of any Rules or orders made there under, the prescribed authority shall declare the election of the returned candidate to be void. The power under Section 139 (1) (d) (iii) and (iv) of the Gram Panchayat Act to declare the election of the returned candidate to be void is qualified by the expression that the said non-compliances or improper,

refusal or rejection of votes or reception of any vote which is void has materially affected the result of election. Since there is no pleading in the election petition that the illegalities or irregularities has materially affected the result of election, there is no election petition in the eye of law and the trial of such election petition would amount to misuse of the process of the court. The election petition is further fit to be dismissed for defects of verification and affidavits Rule-1-8 of the Bihar Panchayat Election Rules, 2006 mandatorily provides for verification of contents of election petition in the manner prescribed under Order-6 of the Code of Civil Procedure, 1908 for verification of the pleadings. A cursory glance of the verification and affidavit of the election petition would show that neither the affidavit nor the verification of the election petition is in accordance with the provisions contained under Rule-6 of the Code of Civil Procedure. Since the election petition does not comply the mandatory requirements of Rule-108 of the Bihar Panchayat Election Rules, 2006, the instant election petition deserves to be dismissed before trial since this is not an election petition in the eye of law. The Respondent no. 1 has not filed any application like the present one earlier before this Hon'ble Court. It is, therefore, most humbly, prayed that Your Honour may graciously be pleased to dismiss the election petition.

Per contra, Petitioner submits that the petition filed by respondent No. 01 is not maintainable either on facts or in law and liable to be rejected. From perusal of the petition it is clear that petition has been filed under order 7 rule 11(a) but from the perusal of the petition para-15 it is clear that cause of action has been mentioned in this paragraph. Allegations contained in petition para-1 to 3 is neither here nor here because it is mentioned in the act therefore. There is no necessity to mention these facts in the petition. Allegations contained in para-4 to 6 is provision of law, if any evidence will come before the court then that cannot be proved if adduce by any party beyond the pleading, therefore, there is no necessity to mentioned the facts in this petition. The allegations contained in petition para-7 the matter of argument and there is no necessity to mentioned the facts in the election petition. The allegation

Election 02 of 2021

contained in petition para-8 to 10 are also mentioned in election petitioner and this petition is only repetition. The allegation contained in petition para-11 to 15 are mere repetition and unnecessarily mentioned in the petition. The allegations contained in petition para-16 and 17 is totally wrong. No question arises about 1st voter list and 2nd voter list contained in petition. The allegations para-18 is mentioned in Gram Panchayat Act and unnecessarily it is mentioned in the petition. The allegations contained in petition para-19 and 20 is mere repetition. The allegations contained in petition para-21 is partly correct and partly incorrect. Panchayat Rajya rule under 108 . It is mentioned that the verification is made according to the provisions of order 6 C.P.C. The allegation contained in petition para-22 to 24 is mere and have been mentioned only with a view to file this petition. The petitioner has mentioned the provision of order 6 rule 16 C.P.C. but in the whole petition there is no any averment which has to strike out in pleading moreover cause of action is also mentioned in the petition therefore what should be mentioned in the petition is not mentioned and which ought not to be mentioned has been mentioned. It is, therefore, prayed that your honour may be pleased to reject the petition of respondent No.-01 dated-10-08-2022. and for which petitioner shall ever pray.

Heard both the sides and perused the record. Upon perusal I find that the plea taken by the petitioner is that the petitioner has made his attempts to challenge the election of respondent no.1 on the ground of improper reception of void votes by the deponent and non-compliance with the provisions of the Act and Rules or the order made there under as contemplated under Section 139(1)(d)(iii) and (iv) of the Gram Panchayat Act. Further they have taken the plea that In Schedule-II appended with the election petition, the election petitioner has set out the name of four voters said to be dead and it has been further averred that on the date of election vote was also polled in their name but there is no pleading in the election petition that four votes in the name of dead voters was polled in favour of respondent no.1. It is stated on behalf of the respondent no.1 that out of four voters said to be dead, two namely Shail Devi wife of Shiv Kumar Singh and Surendra Singh son of Hirday Narayan Singh are still alive and, therefore, the election petition deserves to be dismissed on the

Election 02 of 2021

ground that the election petitioner has not approached this Hon'ble Court with clean hands. Further he submitted that there is no pleading in the election petition at all that as to how the irregularities or illegalities alleged on the date of election or on date of counting has materially affected the result of election. Further he has stated that affidavit filed by the petitioner is not as per rule. In reply to the petition of respondent no.1 the petitioner submits that the petition filed by respondent No. 01 is not maintainable either on facts or in law and liable to be rejected. From perusal of the petition it is clear that petition has been filed under order 7 rule 11(a) but from the perusal of the petition para-15 it is clear that cause of action has been mentioned in this paragraph. Allegations contained in petition para-1 to 3 is neither here nor there because it is mentioned in the act therefore there is no necessity to mention these facts in the petition. Allegations contained in para-4 to 6 is provision of law, if any evidence will come before the court then that cannot be proved if adduce by any party beyond the pleading, therefore, there is no necessity to mentioned the facts in this petition. That the allegation contained in para 7 is matter of arguments hence he has not mentioned in election petition. Further he submitted that the verification is made according to provisions of order 6 cpc. Further it is submitted that the petitioner has mentioned the provision of order 6 rule 16 C.PC. but in the whole petition there is no any averment which has to strike out in pleading moreover cause of action is also mentioned in the petition therefore what should be mentioned in the petition is not mentioned and which ought not to be mentioned has been mentioned. Hence, after considering the averments and submissions of both side this courts comes to conclusion on that, only after the adducing of the evidence by both the parties case can be decided and conclusion can be made. Hence, petition filed by the respondent no.1 is disposed off accordingly.

. Put up on for further proceeding.

Munsif
Sonepur

Election 02 of 2021

Partition Suit 173/2017

20.11.2018 Attendances are filed on behalf of both sides. Today record is put up for order on petition dated 8 May 2018 filed on behalf of defendant number one Rampukar Bhagat under Order VII rule 11 of C.P.C. and rejoinder petition dated 6.10.2018.

Petitioner defendant submits that the suit is hit by principle of res-judicata, because earlier also there was a suit bearing Title suit number 153/93 in which the plaintiff and defendant of this suit were also parties and said the suit was dismissed by judgement and decree dated 31.10.2005. Thereafter defendant number one (plaintiff in T.S. number 159/93) preferred an appeal bearing number title appeal number before the learned Additional District Judge VIII, Chhapra, which was also dismissed by judgement and decree dated 03 December 2009. Thereafter Rampukar Bhagat filed a second appeal vide S.A. No. 117 of 2010 before the Hon'ble High Court Patna, which is admitted for hearing by order dated 17 January 2013 and notices were issued to the concerned respondents. They have appeared through their lawyer for contesting the same. As the earlier proceeding for the same issue between the same parties and for the same subject matter has already been decided by the courts below and the same is pending before the Hon'ble High Court and under the law no fresh suit by the same parties for the same issues is maintainable under section 11 of C.P.C. But in the present proceeding the plaintiffs has prayed for partition of the schedule I and II of the properties by creating a new story. Most of the properties as described in schedule 1 and 2 of the present proceeding are the properties of the defendant number one, through the punchnaama, dated 12 June 1965 between the parties, the defendant number one separated since then and his right, title and possession over the properties allotted to him. Therefore there is no occasion to the plaintiff for filing the fresh partition suit. He further submits that the plaintiff has concealed and suppressed the real and correct facts in the present proceeding and want to mislead the court by placing

wrong facts and also want to disturb his right, title and possession, which is absolutely wrong, illegal and not permissible under the law. He further submits that after partition Ram Prit Bhagat, Kaushalya Devi and Shankar Bhagat have sold their most of share in the properties according to the punchnama and with the wrong intention want partition of the property of defendant number one. Since the partition has already been taken place and the respective parties are in right, title and possession over the properties allotted to them, Hence, in the facts and circumstances, there is no occasion for the plaintiff to file fresh suit for the same relief and the same issues between the parties, which is barred by principle of rest educator under the provision of section 11 of C.P.C. Therefore, in such situation the plaint filed by the plaintiff for the partition of scheduled property is fit to be rejected under section 7 rule 11 of C.P.C.

Per contra, plaintiff submits that the entire facts stated by the petitioner is baseless and motivated without any cogent reasons. T.S. No.159/93 was never filed by the plaintiff of this case, rather during the pendency of the suit plaintiff of this case substituted as one of the defendant after the death of Ram Prit Bhagat. He further submits that T.S. No.159/93 was filed with the prayer to declare the title in disputed land on adjudication which was filed by defendant number one of this case and this suit is filed for partition which is not hit by order 7 rule 11 C.P.C. Therefore, the petition is fit to be rejected and the defendant number 1 be debarred from filing W.S. and the case of the plaintiff be listed for further hearing.

Heard both sides and perused the record. On perusal I find that plaintiff brought this suit for partition and earlier defendant Ram Pukar Bhagat had filed a suit for declaration of his title over the suit land on the basis of punchnaama, dated 12 June 1965, which was dismissed up to first appeal. The defendant has preferred second appeal befor the Hon'ble High Court Patna, which has been admitted. Both suits are different in nature. For rejection of the plaint under order seven rule 11 of C.P.C. there is no need to go into the merits of the rival claims, it is enough that the suit is not hit by any of the grounds mentioned in order seven rule 11 of C.P.C. Hence, the suit is maintainable.

Accordingly, the petition dated 8 May 2018 is rejected.

Election 02 of 2021

Put up on.....

Sub Judge

13.08.18 Both sides have filed their attendances. Today record is put up for order on petition dated 26.02.2018 filed on behalf of Vikas Kumar Gupta under order 1 rule 10(2) and section 151 of CPC and its rejoinder petitions dated 16 May 2018 filed on behalf of plaintiff and defendant number one and two. Petitioner submits that entire disputed plot measuring 16 dhurs is recorded in R S Khatiyani as ‘ *DIHBASGIT MAKAN MAI SAHEN KITA TEEN BAKABJE PALAK KAHAR W/O KALI PRSHARAN CHCHEDI SAKIN DEH BAHISSE*

BARABAR' this shows that the disputed entire plot belonged to Palak and Kali. Kali died unmarried issueless in the State of jointness with his brother Palak Kahar. Palak Kahar and his wife died leaving behind their only daughter Chaniya Devi, who came in possession over the properties of her father including the disputed plot with structure. Chaniya Devi sold the disputed plot number 1361 to Kabootri Devi w/o Manik Chand Mahto of Nayagaon by means of registered sale deed dated 05.04.1961 and put the vendee in possession over the land and property. Kabootri Devi it died leaving behind her two sons Bhuwan Singh and Ram Lakhan Singh who come in possession of the estate of deceased. Two sons of Kabootri Devi privately partitioned the disputed plot to the extent of half and half inter alia other ancestral property. Ram Lakhan Singh died leaving behind his son who came in possession over his properties. Bhuwan Singh is alive, who sold his 8 dhurs share of the disputed land to the petitioner by means of registered sale deed dated 06.10.2017 and put the petitioner over the property sold. Later on sons of Ram Lakhan Singh also sold their 8 dhurs share in the disputed plot to the petitioner and put the petitioner in possession over the property sold. Petitioner further submits that the plaintiff and the defendants, after manufacturing illegal, fake and fraudulent papers of alienation, are illegally claiming the disputed land in order to deprive this petitioner. Thus, the right, title and interest of this petitioner is involved in the suit and, as such, he is a necessary party to the suit. Hence, order for impleadment of this petitioner as a party to the suit in the array of defendants be passed.

Per contra, defendant number one and two submit that the petition is liable to be set aside as the petitioner has no right, title, interest and possession in the suit land nor his vendors have any right, title, interest and possession over the plot number 1361 under Khata number 936, area 16 dhurs. He is not necessary party for adjudication of the suit. They further submit that Chaniya Devi was not daughter of Palak Kahar, nor she had any concerned with the family of Palak Kahar. She was fictitious and stranger to the family of Palak Kahar. They further submit that Chaniya Devi had no right to execute sale deed in favour of Kabutari Devi in respect of plot number 1361 and the sale deed dated 05.04.1961 is void, illegal and invalid and never acted upon. On the basis of void and illegal sale

deed, Kabutari Devi never came in possession over plot number 1361 nor she had any concern with that plot and the heirs of Kabutari Devi have no concern with the property of Palak Kahar nor they have any right, title and possession over the said plot and the said sale deed executed by Bhuwan Singh in favour of the petitioner and the sale deed executed by Upender Prasad, Dashrath Mahto, Ratan Lal and Pankaj Singh in favour of the petitioner are also void, illegal and invalid document which never acted upon nor the petitioner has any right, title and possession over the disputed land. They further submit that Palak Kahar had only daughter named Ramsakhi Devi and after the death of Palak Kahar, his daughter came in possession over the entire property of his father and her name was also mutated in place of her father in sirista of malik Gopalji and she paid rent to Malik. Ram Sakhi Devi died leaving behind her only son Kishun Kahar and Kishun Kahar died leaving behind his only son Suraj Kahar and Suraj Kahar died leaving behind his only son Punkal Kahar and the name of Punkal Kahar also mutated in the sirista of his state of Bihar and registered 2 and he had paid rent to the State government. Punkal Kahar Died leaving behind his wife Dhukhama Kuwer and two sons namely Yogendra Baban alias Bachan. After death of Punkal Kahar, his heirs are coming over entire property of Palak Kahar. They further submit that Punkal Kahar executed sale deed in favour of defendant number one and two in respect of 10 dhurs out of 16 dhurs land in plot number 1361 on 14 August 2010 and put defendant number one and two in possession thereof and rest land remained in possession of heirs of Punkal Kahar, over which still khapraili room is present in which Dhukhama Kuwer is living. He further submit that if any person wants to assert and establish his right, he is at liberty to file an appropriate suit in this regard where intervener is not a necessary party and if at all he is interested in asserting and establishing his right it is for him to file an independent suit but he certainly can not intervene in a suit to where plaintiff seeks no relief against him. Therefore, the petition is set to be rejected.

Per contra, plaintive submits that the petition dated 26 February 2018 is not maintainable as the heirs of Plak Kahar never came in possession over the suit land and in 1934, the house of Plak Kahar was demolished in earthquake and

the land became empty, on which Nagina Singh constructed houses and started living there and Malik Shankar Narayan, Gopalji Sahaye and Most Chandrawati Kuwer made bandobasti in favour of Nagina Singh. He further submits that plaintiff is coming over the possession of suit land within the knowledge of the petitioner and the defendants and the petitioner has no any right, title and interest in the suit land, Hence, he is not the necessary party in this suit. Therefore, the petition dated 26 February 2018 is fit to be rejected with cost.

Heard both sides and perused the record. On perusal I find that plaintiff brought this suit for declaration of sale deed dated 16th of August 2010 executed by Dhukhma Kuwer in favour of Suresh Rai and Sanjeev Srivastava as void and inoperative document. Petitioner claims himself to be the purchaser of suit land from the heirs of Palak Kahar, whose name is recorded in RS Khatiyani, vide sale deed dated 06.10.2017 and 13.11.2017. On the other hand, plaintiff claims her right, title and interest in suit land. This suit is not for the declaration of the title rather the plaintiffs brought this suit for declaration of sale deed dated 16.08.2010 as void, hence, only the parties of the sale deed are the necessary parties of the suit and the plaintiff did not claim any relief against the petitioner. Therefore, the petitioner is not the necessary party this suit.

Accordingly the petition dated 26th of February 2018, is rejected.

Put up on

Sub Judge

Election 02 of 2021

Both sides have filed their attendances. Today record is put up for order on petition dated 27.02.2018 filed on behalf of plaintiffs under order 1 rule 10(2) of C.P.C. and its rejoinder petition dated 17.04.2018 and filed on behalf of defendants.

Election 02 of 2021

Petitioners submit that defendant second set namely Sathuri Devi wife of Prabhunath Rai and Sukhali Devi, wife of Bhishma Rai executed two sale deeds on 29.12.2017 and one sale deed on 03.01.2018 in favour of Lalmatiya Devi and Rajpati Devi and in joint name of Yogendra Rai and Ramchandra Rai and now the purchasers formed a group and are trying to dispossess the plaintiffs. Therefore, the purchasers be added as defendant fourth set in order to enable the court effectually adjudicate upon and settle all the questions involved in the suit.

Per contra, defendants second set admitted the sale deed executed by them. They submit that the purchasers are not necessary parties because the sale deeds are executed during the pendency of the suit, hence, be guided by section 52 of Transfer of property Act. Therefore, the petition is fit to be rejected.

Heard both sides and perused the record. On perusal I find that the plaintiffs brought present suit for partition. It is an admitted fact that defendants second set has executed sale deed in respect of portion of suit land during the pendency of the suit. The purpose of section 52 of transfer of property is not to defeat any just and equitable claim but only to subject them to the authority of the court which is dealing with the property to which claim are put forward and pendente lite purchasers are bound by the decision of the pending litigation.

In the light of the above observation, this court conclude that pendente lite purchasers are bound by the decision of the pending litigation, hence, they should be add as parties to the suit to avoid future difficulties.

Accordingly, petition dated 27.02.2018 is allowed.

Put up on

SubJudge

T.S. 444/2007

03.07.18. Both sides have filed their attendances. Today record is put up for order on petition dated 23.05.2018 filed on behalf of defendant number 1 under section 12 of C.P.C. and its rejoinder petition dated 24.05.2018 and filed on behalf of plaintiff.

Election 02 of 2021

Petitioners submit that above case is based on the compromised decree passed by Sub Judge 2nd Munger in Partition Suit 66/1977 and further suit will not lie because after decree the plaintiff should file execution case or final decree in the court of Munger. They further submit that suit properties had already been partitioned amongst the co-sharers since long long ago. The properties recorded in R.S. Jagernath Singh, who gifted some properties to Smitra Devi on 26.24.1974. Defendant number one purchased properties from the branch of Deokinand Singh, Vijai Bahadur Singh and Sumitra Devi also and came in peaceful possession. They further submit that defendant number one was not made party and collusively, fraudulently obtained decree. When defendant number one got knowledge about the compromise decree from this suit and filed miscellaneous case number 1/2015 in the court of second sub judge at Munger who passed the decree and present title suit is barred by law and not maintainable. Therefore, the present suit be dismissed or stayed till the disposal of miscellaneous case 01/2015 pending under order 23 rule 3 in the court of Sub Judge second Munger, who passed compromised decree, which is pending and sub judice and on that ground further suit is not maintainable to the adjudication to the ends of Justice.

Per contra, plaintiff submits that the petition is not maintainable. He further submit that the defendant is not willing to dispose of the suit so they have filed frivolous petition on 10.06.2016 under section 10 CPC which was rejected on 21.03. 2017 and then defendants seeking adjournment to file revision but did not file any revision or writ application in Hon'ble High Court Patna. When the present court proceeded to dispose of the case, they again file the petition only with a view to linger the proceedings. Therefore the petition is fit to be rejected.

Heard both sides and perused the record. On perusal I find that on 10.06.2016, the petitioner had filed a petition, under section 10 of CPC, praying there to stay further proceeding of the present suit on the basis of miscellaneous case 01/2015 under section 10 of CPC, which was rejected vide order dated 21.03.2017. Again petitioner has filed present petition with a prayer to dismiss or stay the present suit till the disposal of miscellaneous case 1/2015. The petitioner had made the similar prayer which has already been rejected by the court. The conduct of the petitioner shows that he wants to linger the disposal of the present suit.

Therefore, the petition dated 23.05.2018 stands rejected on the cost of Rs. 300/-

Put up on

P.S. 127/2009

13.07.18 Both sides have filed their attendances. Today record is put up for order on petition dated 31.01.2018 filed on behalf of plaintiffs under order 40 rule 1 and section 151 of C.P.C. and its rejoinder petition dated 22.02.2018 and filed on behalf of defendants.

Petitioners submit that they are very poor, any how they maintain their family and mostly they used to live outside. They further submit that defendants are very powerful persons and on 5.11.2017, they are ousted the petitioners and took the

Election 02 of 2021

possession of suit land and started cultivating over there. When the petitioners protested them, they became adamant to assault the petitioners. Therefore, it is essential to appoint receiver on the land mentioned in schedule number 1 of the plaint excluding the land covered in sale deed dated 30.09.1940.

Per contra, defendants submit that the plaintiffs do not belong to their dynasty and there is no unity of title and jointness of possession between the parties. They further submit that the petitioners have admitted that shareholders have sold most of the land but the plaintiffs did not make them parties in the suit. They further submit that the petitioners are neither in possession of suit land nor any prima facie case in their favour. Hence, the petitioners will not suffer any loss. Therefore, the petition is fit to be rejected cost.

Heard both sides and perused the record. On perusal I find that the plaintiffs brought this suit for carving out their 5/12 share in the suit land. Plaintiffs admitted that they are not in possession of the suit land and defendants are cultivating the land. For appointment of a receiver it is the duty of the plaintiff to show some emergency or danger or loss demanding immediate action and further to prove that prima facie the plaintiffs have an excellent chance of success in the suit. Mere allegation that the defendants are cultivating the land and on protest they became adamant to assault the petitioners is not the ground to appoint a receiver.

Accordingly, petition dated 31.01.2018 stands rejected.

Put up on

Sub Judge

F.D.342/97

13.07.18 Both sides have filed their attendances. Today record is put up for order on petition dated 04.03.2017 filed on behalf of decree holders and its rejoinder petition dated 03.02.2018 filed on behalf of judgement debtors.

Petitioners submit that on 10 August 2016, Hon'ble High Court Patna was pleased to reject the stay petition of the defendants. Therefore further proceeding of this final decree be expedite and a survey knowing pleader commissioner be appointed.

Election 02 of 2021

Per contra, judgement debtors submit that Hon'able High Court Patna did not reject their stay petition rather Hon'ble High Court Patna observed that the petition for stay will be heard at the time of admission of second appeal, which has not been heard as yet. Therefore, the petition dated 04.03.2017 is fit to be rejected.

Heard both sides and perused the record. On perusal I find that petitioners are the decree holders and judgement debtors preferred first appeal, which was dismissed on 30.04.2015. Thereafter the judgement debtors preferred second appeal before Hon'ble High Court Patna, which is not admitted as yet.

The proceeding of final decree is in continuation of preliminary decree, which can not be stayed merely on the ground of filing of second appeal.

Accordingly, petition dated 04.03.2017 is allowed. Decree holders to deposit the fee of survey knowledge pleader commissioner.

Put up on

Sub Judge

T.S. 163/2017

21.07.2018 Both sides filed their attendances. Today the record is put up for order on petition dated 16.04.2018 filed on behalf of plaintiff under order 39 rule 1, 2 and section 151 of C.P.C and its show cause dated 23.05.2018 filed on behalf of defendants no. 5 to 8.

Petitioner submits that the defendants have started alienating the suit land beyond their shares and further they have started uprooting the trees and wanted to change the nature of suit land. He further submits that prima facie case and balance of convenience are in his favour and if the defendants are not restrained,

irreparable loss will cause to him. Therefore, the defendants be restrained from changing the status, making construction, uprooting trees and for alienating the suit land till disposal of this suit.

Per contra, defendants submit that neither any prima facie case nor balance of convenience is in favour of the petitioner and petitioner will suffer no injury, if injunction not granted. They further submit that originally the suit land belonged to Khobhari Pandey, who executed a deed of will in favour of Biswanath Tiwari, Bilas Tiwari and Yadu Ojha and the legatees have partitioned the properties and came in separate possession. They further submit that Deena Nath Tiwari had no concern with the properties of Khobhari Pandey. Defendant number one is the grand daughter of Viswanath Tiwari and she as a rightful owner in possession, sold the land to the defendants and put them in possession and the defendants name stand mutated in register II and defendants paying rent to the State of Bihar and further some of the defendants have also dealt with the properties in possession and there vendees are in possession. As such the defendants have prima facie title over the disputed land the plaintiff and his brother and nephew have no concern with the disputed land. Therefore the petition is fit to be dismissed with cost.

Heard both the sides and perused the record. On perusal I find that it is an admitted fact that the ancestors of the vendor of the defendants got the suit land through deed of gift. The plaintiffs did not produce any chit of paper in connection of their title over the suit land. Therefore, neither any prima facie case nor balance of convenience is in favour of the petitioners.

Accordingly, the petition dated 16th of April 2018 stands rejected.

Put up on

Sub Judge

collecting construction material and also started digging soil and on protest they became adamant to assault. He further submits that with a view to harass the petitioner, the defendants are adamant to change the nature, destroy the rooted trees and alienate the suit land. He further submits that the defendants have already received the advance from many persons and can sell the suit land at any day. He further submits that prima facie case and balance of convenience are in his favour and if the defendants are not restrained, irreparable loss will cause to the petitioner. Therefore, the defendants be restrained from changing the status, making construction and for alienating the suit land described in the foot of the petition dated 24.05.2018, till the disposal of this suit.

Per contra, defendants submit that the petition was not maintainable as petitioner did not disclose as to which of the plots, he has taken the pleader commissioner and as to which of the plots, he wants to stop the construction work. They further submit that

Election 02 of 2021

there is no uniformity among the description of the land mentioned in the plaint, injunction petition and the report of pleader Commissioner. They further submit that it appears from the report of pleader Commissioner that the share holders have their one build house and other half constructed house. They further submit that neither any prima facie case nor balance of convenience are in favour of petitioner and no irreparable loss will cause to the petitioner, if injunction not granted. Therefore, repetition is fit to be rejected with heavy cost.

Heard both sides and perused the record. On perusal I find that petitioner plaintiff brought this suit for carving out his 1/6 share from the suit land described in schedule 1 of the plaint. Defendants claims that in 2015, after the death of Brahamanath Singh, partition was held amongst the sons of Brahamanath Singh. Status report of the suit land bearing khata no. 21, survey no. 49 and khata no. 17, survey number 50 and 51 area 4 kathas, is available on record. From perusal of the report it appears that pleader commissioner has found a house under construction having eight bricks layer construction with PCC work and the other newly constructed house without plaster and one mango tree and one hut over the aforesaid suit land. The defendants, in their show cause, did not deny the status of the suit as given in the report of pleader commissioner. They did not deny the fact of taken the advance from many persons in order to alienate the suit land.

Considering the above facts, it appears that the defendants neither produce any chit of paper of in respect of partition nor they disclose as to which portion of suit land allotted to which of the share holder. There no force in their version. Hence, prima facie case and balance of convenience are in favour of the petitioner and if the defendants are not restrained, the petitioner may cause irreparable loss.

Therefore, the defendants are restrained from making new construction and alienating the portion of suit land bearing khata no. 21, survey no. 49 and khata no. 17, survey number 50 and 51 area 4 kathas without the leave of the court till further order.

It is pertinent to mention here that the finding of this order will have no binding effect on further proceeding of the present suit.

According, the petition dated 24.05.2018 is allowed.

Put up on

Sub Judge

Misc. 13/2012

29.06.2018 Both sides filed their attendances. Today the record is put up for order on petition dated 01.08.2015 filed on behalf of petitioner under order 39 rule 1 and 2 of C.P.C and its show cause dated 22.08.2015 filed on behalf of opposite parties. Petitioner submitted that he used to live in Bokaro, on information, he came at his place and saw that the opposite parties have damaged the joint family house bearing khata number 164 survey number 1187 and khata number 146, survey number one 188 and 1189, in which three rooms were in possession of the petitioner. On protests, they became adamant to badly assault the petitioner. He further submits that opposite parties have no right to damage joint residential house without partition, hence, a prima facie case and balance of convenience in favour of the petitioner and if the opposite parties will not restrained, irreparable loss will cause to the petitioner which cannot be compensated in terms of money. Therefore, opposite parties be restrained from damaging the joint residential house and making new construction over the suit land till

disposal of this suit and further the opposite parties be restrained from ousting the petitioner in his residential in his house.

Per contra, opposite parties submit that partition has already been held between the parties on the basis of compromise decree passed through Lok Adalat and the share holders are in peaceful possession of their allotted shares. They further submit that their allotted residential house was in dilapidated condition so that they were repairing the same. hence, neither prima facie case nor balance of convenience are in favour of the petitioner and no irreparable loss will cause to the petitioner, if the injunction not granted.

Heard both sides and perused the record. On perusal I find that the petitioner brought this miscellaneous suit for setting aside the compromise decree dated 3 August 2007 passed in Partition Suit No. 235/2001 by Lok Adalat on the ground that the compromise had not been signed by the petitioner, hence, the compromise decree is obtained by playing fraud etc.

As the decree and the judgement of Partition Suit No. 235/2001 is intact, hence, neither any prima facie case nor balance of convenience are in favour of the petitioner.

According, the petition dated 1 August 2015 is rejected.

Put up on

Sub Judge

Election 02 of 2021

they brought the present suit for declaration that judgement and decree passed in T.S.138/77 is not binding on them and also for partition of schedule I and scheduled II land. They have also sought relief of injunction against defendants from alienating or mortgaging suit land till disposal of the suit. They further submit that there has been no partition by metes and bounds, so this partition suit has been filed. As such plaintiffs have good prima facie case and title over the suit land and the plaintiffs had their share in the disputed land and cultivate the same according to their convenience, so balance of convenience is in favour of plaintiffs and further the plaintiffs will suffer a lot, if defendants alienate or mortgage disputed land during the pendency of the suit. They further submit that the defendants are disparate and have no regard for the share of the plaintiffs, so it is necessary to restrain them. Therefore the defendant be restrained from alienating, or mortgaging the suit land and further they also be restored from making any construction over there.

Per contra, defendants submit that the plaintiffs have no share in suit land. They further submit that in the years 1924, partition was held between Nawal Sah and Soudager Sah and after partition Nawal Sah acquired properties to which the heirs of Soudager Sah had no concerned. They

further submit that T.S.138/77 was filed for partition among the heirs of Nawal Sah, hence, the heirs of Soudager Sah, were not the necessary parties in that suit. They further submit that plaintiffs have neither unity of title nor jointness of possession over the suit land, hence, neither any prima facie case nor balance of convenience is in favour of the plaintiffs and no irreparable loss will cause to them if injunction not granted. Therefore, the petition is fit to be rejected with the cost.

Heard both sides and perused the record. On perusal I find that the plaintiffs brought present suit for declaration that judgement and decree passed in T.S.138/1977 is not binding on them and also for partition of schedule I and scheduled II land. Plaintiffs filed the present petition for injunction on 20.04.2009 but did not press the same. After lapse of nine years, the plaintiffs have pressed his petition. During hearing the plaintiffs submit that the defendants did not do any act against their interests but presently the defendants have started making construction over the suit land, hence, there is a need to restrain them else irreparable loss be caused to them. As judgement and decree of T.S. 138/1977 is in favour of the defendants, which is still intact. Therefore, neither any prima facie case nor balance of convenience is in favour of the petitioners.

Accordingly, petitions dated 20.04.2009 and 29.06.2018 stand rejected.

Put up on

Sub Judge

T..S. 288/2016

02.07.2018 Both sides filed their pairvi. Today the record is put up for order on petition dated 15.11.2017 filed on behalf of plaintiff under order 39 rule 1 and 2 of CPC and its rejoinder petition dated 05.04 2018.

Petitioner submits that the khatiyaan of suit land is recorded in the name of Luxdhari Pandey, who had only one daughter Ram Pyari Devi. Luxdhari Pandey had gifted his property to his daughter vide gift deed dated 10.06.1942. Ram Pyari Devi died leaving behind her only son Devender Upadhyaye. Being the only legal heir Devender Upadhyaye was in peaceful possession of the suit land. Devender Upadhyaye executed a sale deed dated 09.03.2015 in respect of the suit land in favour of the plaintiff. Petitioner further submits that his name has got mutated and rent receipts are also issued in his name. Petitioner further submit that the defendants are adamant to dispossess him, hence, the defendant be restrained from damaging the crops and dispossessing the petitioner from the suit land till disposal of the suit.

Per contra, the defendants submit that the petition is not maintainable and neither any prima facie case nor balance of convenience is in favour of the petitioner and no irreparable loss will cause to the petitioner if injunction not granted. He further submit that the suit land is their ancestral land and they are in possession of the suit land since the time of their ancestors. Therefore, the petition is fit to be rejected.

Heard both sides and perused the record. On perusal I find that the plaintiff brought this suit for declaration of his title over the suit land. Defendants in paragraph 19 of their written statements admitted that the suit land belonged to Ram Pyari Devi and she had executed sale deed in favour of Raktu Mistri in 1965 and after Raktu Mistri, the heirs of his two sons came in peaceful possession of suit land. They claimed that the sale deed is missing and they are taking full effort to obtain the sale deed.

The sale deed dated 09.03.2015 is brought on record, which is executed by Devender Upadhyaye in favour of the plaintiff. Defendants did not produce any paper in support of their version. As the sale deed in respect of suit land is in favour of the plaintiff and defendants did not challenge the sale deed in any competent court, hence, the prima facie case and balance of convenience is in favour of the plaintiff and any act of the defendants against the interest of the plaintiff will cause irreparable loss to him.

Accordingly, petition dated 15.11.2017 is allowed and the defendants are restrained from damaging the crops rooted over the suit land and further from dispossessing the plaintiff from the suit land without due process of law till further order.

Put up on

Sub Judge

of his title over the land mentioned in schedule 'ka' of the plaint and for declaration of sale deed dated 02.06.1997 as void document and is not binding on the plaintiffs. Petitioner further submits that partition was held among the five brothers in 1965 and thereafter his father has purchased the land mentioned in schedule 'ka' from his own income through registered sale deed dated 10.09.1969 and since purchase, his father was in peaceful possession of his purchased land and further after the death of his father, the plaintiffs are in possession of the land. He further submits that the defendants are adamant to damage the rooted trees over there and also to sale the land. He further submits that the defendants have already been taken advance money from many persons and they have also prepared the contents of deed. He further submits that *prima facie* case in his favour and balance of convenience is also in his favour and if the injunction will not be granted, he will suffer irreparable loss. Therefore, it is essential in the interest of Justice that order of injunction be granted in favour of plaintiffs and the defendants be restrained to change the nature of the suit land and also from transferring the land to any person.

Per contra, defendants submit that the petition is not maintainable and further submit that suit land was purchased from joint family income and partition was held among the five brothers in 1982 and *punchnaama* was also prepared bearing signatures of *mukhiya punch* and the parties and since partition, parties are in possession of their allotted share which can be proved by taking present status of suit land. Hence, neither any *prima facie* case is made out in favour of the petitioner nor any balance of convenience in his favour and the petitioner will not suffer any irreparable loss if the injunction is not granted. Therefore, the petition is fit to be rejected with cost.

Heard both sides and perused the record. On perusal I find that the plaintiffs brought present suit for declaration of their title over the land mentioned in schedule 'ka' of the plaint and for declaration of sale deed dated 02.06.1997 and 15.11.2008 as void document and not binding on them. Petitioner claims that partition was held in the year 1965 and defendants claim that partition was held in the year 1982. Defendants also filed photocopy of *punchnaama* in support of their claim, which is illegible and date, month or year is not appeared on it. So this paper of *punchnaama* is no more of any use. As the sale deed in respect of suit land is in the name of father of plaintiff, hence, *prima facie* case and balance of convenience are in favour of petitioner and irreparable loss may cause to him if defendants not restrained.

Therefore, defendants are restrained from transferring suit land to any person without the leave of the court till further order.

According, the petition dated 24.05.2018, stands dispose off. It is pertinent to mention here that the finding of this order will have no binding effect on further proceeding or trail of this suit.

Put up on

Sub Judge

tioned in schedule 1 and 2 of the plaint. He further submits that all the defendants are in collusion of each other and with a view to deprive the plaintiff for his share, they are selling the portion of suit property without partition. He further submits that defendants number 9 Rajanand Singh has sold in plot number 842, 1393 through sale deeds to Mithlesh Singh, on 20 February 2013 to Gya Prasad Singh on 23rd of September 2013 and two Lakshman Thakur on 17 January 2015 without partition. Likewise defendant number 2 Ram Gahan Singh has also sold joint property in favour of Smt. Vibha Devi, Smt. Anita Devi on 14th of June 2012. He further submits that all the sale deeds have been executed during the pendency of the present suit and valuable land has been transferred and all the defendants want to sell entire property without partition and if the entire property is being sold the present suit will be infructuous. He further submits that prima facie case in his favour and balance of convenience is also in his favour and if the injunction will not be granted, he will suffer irreparable loss. Therefore, it is essential in the interest of Justice that order of injunction be granted in favour of plaintiffs restraining the defendants not to transfer any portion of disputed land in favour of any person.

Per contra, defendant submits that the petition is not maintainable in the eye of law as well as on facts and fit to be rejected. He further submit that the petitioner has not sought any relief of injunction in the plaint as such the petitioner is not entitled to any relief of injunction. He further submits that plot number 1393 is self acquired property of Rajanand Singh and he had absolute right to sell it. He further submits that prior partition had taken place and after khangi partition Ram Gahan Singh has sold 97 decimals land to Vibha Devi and Anita Devi in Rs. 2 lakhs 96,000/-and executed sale deed number 4590 dated 26th of May 2008, four years prior to the institution of this suit, as such it is not correct to say that Ram Gahan Singh sold joint property and sale deed executed during the pendency of the suit. He further submits that the defendants are not going to sale any property and hence no prima facie case is made out in favour of the

petitioner nor any balance of convenience in his favour and the plaintiff will not suffer any irreparable loss if the injunction is not granted. Therefore, the petition is fit to be rejected.

Defendant number 9 Rajnandan Singh su,mits that the petition is mala fide frivolous, wrong and not maintainable. He further submits that the petitioner has earlier filed the petition for injunction on 3rd August 2012, which was rejected on 29th of April 2013 and petitioner has filed second petition which is barred by resjudicata. He further submits that the petitioner and the defendants belong to same family and khangi partition has effected in 1958 and after partition each co sharer is in exclusive possession over their allotted share and the said partition was acted upon by mutual transactions. He further summits that after partition the petitioner himself has sold the land. He further submits that plot number 1393 is his self acquired property and plaintiff and other defendants have no any concerned to this plot. He further submits that after partition mutation was made and the state has granted rent receipt in his name. He further submits that during the pendency of the suit defendants number 8 has transferred his all property to the wife of his nephew Sunita Kumar Singh and Subodh Singh. Hence neither any prima facie case nor balance of convenience are in favour of the petitioner and no irreparable loss be caused to the petitioner. Therefore, the petition is fit to be rejected with the cost.

Heard both sides and perused the record. On perusal I find that earlier petitioner has filed the petition for injunction which was dismissed on 29th April 2013 on merit. There is no any fresh ground to file this second petition for injunction.

Therefore, petition dated 2 September 2016, is dismissed.

Put up on

subjudge 5

TRIAL NUMBER 926/17

03.04.18 Attendance is filed on behalf of complainant. A representation petition u/s 317 of Cr.P.C. is filed on behalf of accused Smt. Prabhavati Devi, which is accepted for today only. Today the record is put up for order on petition dated 9.01.2018 filed on behalf of complainant u/s 311 of Cr.P.C. and its rejoinder petition dated 23.02.2018, are put up for order today.

Petitioner submits that this case was pending for examination of witnesses before charge and last chance was given on 11.08.2017, but he failed to adduce evidence as he was badly engaged in respect of marriage of his daughter and a time petition was also filed on his behalf on 11.10.2017, but the court was pleased to reject the prayer for time of the petitioner and closed the evidence. He further submits that for the end of Justice the examination of complainant and his witnesses at the stage of before charge is very necessary and the complainant is appeared in the court today to be examined as witness before framing charges and other witness who have been examined during the enquiry stage are also ready to be examined as witnesses. Therefore the order dated 11.10.2017 for closing the evidence should be recalled for the end of justice and fair play.

Per contra, defence submits that the court has given sufficient opportunity to the petitioner to adduce the evidence and on 11.08.2017 last chance was giving to the petitioner but the petitioner did not adduce any evidence before charge and lastly on 11.10.2017 the court closed the evidence before charge. Therefore the petition dated 9.01.2018 is fit to be rejected.

Heard both sides and perused the record. On perusal I find that on 23.01.2018 a prima facie case was made out u/s 420 of IPC against the accused. The accused appeared on 9.05.2017 and since 12.07.2017, the case was pending for evidence before charge but the complainant left his pairvi and did not take any interest in further proceeding of this case. Therefore, evidence before charge was closed on 11.10.2017. The petitioner stated that he was badly engaged in the marriage of his daughter but she did not produce any paper in respect of the same and sufficient opportunity has been given to the him to adduce the evidence but he failed to adduce the evidence before charge.

Considering the above observation I think that it is in the interest of justice to give one more chance to petitioner to adduce the evidence before charge. Hence, the petition dated 9.01.2018 is allowed on the cost

of Rs. 2,000/- and the petitioner is directed to adduce all his evidence within two months or in three dates which ever is later.

Put up on _____ for evidence before charge.

A.C.J.M.5

Trail No. 47/2017

06.04.18 Accused Dhanjeet Bahadur Singh, Santosh Kumar, Kamlesh Singh and Nand Kishore Rai are present. A representation petition under section 317 of Cr.P.C. is filed on behalf of rest of the accused persons, which is accepted for today only. A petition dated 14.03.18 filed on behalf of prosecution under section 311 of Cr.P.C. along with the attendance of witness namely Shashikant Kumar and it's rejoinder petitions dated 21.03.2018 filed on behalf of of accused persons.

Petition submits that prosecution evidence has been closed and all the witnesses are ready to depose. Therefore, in the interest of Justice, the prosecution be allowed to adduce its evidence.

Per contra, defence submit that the petition filed by the prosecution is not maintainable in the eye of law and the prosecution has filed the petition only with a view to delay the disposal of case. They further submit that no prosecution witness turned up in spite of issuance of warrant and the record is also seen by the prosecution. Despite, the prosecution did not adduce any evidence. Hence, the prosecution evidence was closed and the statement of the accused under section 311 of Cr.P.C. were recorded and the record was fixed for judgement. They also relied upon Cr.L.J. 2000 Page3705 and Cr.L.J. 2004 page 1512.

Herd both sides and perused the record. On perusal, I find that no prosecution witness was turned up and the order sheet Is also seen by the prosecution. Despite, the prosecution failed to produce any evidence.

Considering the above observation I think that it is in the interest of justice to give one more chance to prosecution to adduce the evidence. Hence, the petition dated 14.03.2018 is allowed on the cost of Rs. 1000/- and the prosecution is directed to adduce all his evidence within three months or in four dates which ever is later.

Put up on _____ for evidence.

A.C.J.M.5

Title suit number 214/2016

08.06.2018. Attendances filed on behalf of both sides. Today the record is put up for order on petition dated 19.05.2016, 16.12.2017 and 16.05.2018 filed on behalf of plaintiff and show cause dated 17.06.3016 and 08.05.2018 filed on behalf of defendant number 3.

Petitioner submits that he brought this suit for the declaration that he has not made any encroachment over the land described in schedule number '2' of the plaint. He further submits that due to political pressure, the defendants are adamant to grab his land. Petitioner has made prayer for appointment of survey knowing pleader Commissioner for scientific measurement of the land. Petitioner further submits that earlier, by the order of defendant number 3, the date, 19.04.2016, was fixed for measurement of the land but no measurement was made on the date fixed rather the measurement was done on 20.04.2016, without giving notice to the petitioner and defendant number 3 has directed the petitioner to remove the encroachment, vide its letter dated 03.05.2016 and 17.04.2018 and again defendant number 3, vide its letter dated 12.05.2018, directed the petitioner to remove the encroachment on or before 18.05.2018, otherwise they will get remove the encroachment on the cost of the petitioner. Therefore, defendant number 3, be restrained from demolishing the house and its premises and from doing any act against the interest of the petitioner.

Per contra, defendant number 3 submits that the petition is not maintainable and this court has no jurisdiction to entertain the suits relating to the cases under the provisions of Bihar Public Land Encroachment Act 1956. He further submits

that this matter is related to the removal of encroachment from the public land and as a matter of fact this defendant initiated a proceeding for removal of encroachment from plot bearing number 1467, area 4 kathas and 6 dhurs under Khata number 248, Village Busti Jalal as ordered by Hon'able High Court, Patna in CWJC number 4991/15 and CWJC number 4309/15. Sonepur Anchal Amin was deputed to measure the land and report about encroachment. Sonepur Anchal Amin was deputed because the post of Amin in Dighwara Anchal was vacant and initially measurement work was fixed to be done on 19 April 2006 but due to vacation of government offices on the eve of Mahavir Jayanti, the measurement work was extended for 20 April 2016, which was intimidated by the authority to the concern persons and also to the petitioner by telephonic talk. Anchal Amin did the measurement work and reported about encroachment over the public land. He further submits that survey number 1464 area 4 kathas and 6 dhurs under khata number 248 has been recorded in R.S. khatiyan as Ghairmajarwa Aam Payin and it was used by the villagers for the purpose of irrigation but presently its nature has been changed and used as lane. He further submits that the petitioner was mukhiya of panchayat in previous term and he encroached some portion of disputed plot. So the proceeding for removal of encroachment was initiated and accordingly by adopting due process of law the work for removal of encroachment was in progress. But in the meantime, the petitioner has filed the suit to stay removal of encroachment from the disputed land. He further submits that neither injunction has been sought in the plaint nor court fee for injunction has been paid so no injunction can be granted in such circumstances. He further submits that disputed land is common land and plaintiff has no concern with it. He further submits that earlier the plaintiff had encroached some portion of the disputed land by erecting boundary wall in the year 2010 which was removed on 27th of June 2016 in the light of the order passed by Hon'able High Court and the status quo was restored. The plaintiff after demolition of boundary wall thatched breaks over the same plinth. The temporary structure created hindrance in the free flow of traffic and causing hardship to the villagers. This temporary structure is also required to be remove and the house of the plaintiff is not in picture. He further submits that it is wrong

to say that this defendants are in collusion of the enemies of the petitioner and this is also wrong that plaintiff has not encroached any portion of disputed land. So neither any *prima facie* case nor balance of convenience in favour of the petitioner and no irreparable loss will cause to him. Therefore, the petition has no merit and is fit to be rejected with the cost.

Heard both the sides at length. During hearing, Ld. Counsel on behalf of petitioner relied upon observation made in *Ranjibai V Kamla Devi* reported in AIR 1996 Supreme Court 1946, where it was held that ‘in a suit of declaration of title simpliciter, the court has power under order 39, Rule 1,2 or even under section 151 to grant ad interim injunction pending suit. Where the appellant is in possession of the property in view of his apprehension that there is threat to his possession, his only remedy would be whether he will be entitled according to law, necessarily the court has to consider whether protection is to be given to him pending the suit. Merely because there is no dispute as regards the corporeal right to the property, it does not necessarily fallow that he is not entitled to avail the remedy under order 39, Rule 1,2 of C.P.C. it is settled law that under section 151 of CPC, the court has inherent power to protect the right of the parties pending the suit.’

Ld. G.P. relied upon the observation made in *Sanjai Jha V State of Bihar*, 2016 PLJR 248, where Hon’ble Justice I.A. Ansari A.C.J and Justice Chakradhari Saran Sharma observed that ‘....where a magistrate comes to know about existence of the destruction/public nuisance enumerated in section 133, the magistrate is legally duty-bound to swing into action at once in as much as his duty, in this regard are directly with public relations/unlawful obstruction, which may be injurious to health or physical comfort of public – directions issued to be followed by all concerned in the state – direction that this order must be followed with utmost scruples and without any demur and any person, who is found to be not complying with the present order, shall be liable for disciplinary/criminal action apart from contempt of court....’

Ld. G.P. also relied upon the observation made in S.N. Choudhary & others V Darbhanga District Board, 1978 BBCJ 493, where it was held that no suits lies against an order passed on land encroachment proceedings.

From perusal of record and the papers/documents brought on record on behalf of the parties. I find that as per the directions of Hon'ble High Court Patna in CWJC number 4991/15 and CWJC number 4309/15, defendant initiated proceedings for removal of the encroachment from plot number 1464, area 4 kathas and 6 dhurs under khata number 248, Village Basti Jalal and Sonepur Anchal Amin was deputed to measure the land on fixed date 19.04.2016 and to submit the report but on the eve of Mahavir Jayanti, 19.04.2016 was declared holiday and measurement work was extended for very next day 20.04.2016, considering the matter as most urgent. The petitioner was informed through telephonic talk about the same. On 20.04.2016, Sonepur Anchal Amin did measurement work and found the encroachment over the public land and vide letter dated 03.05.2016, the petitioner was directed to remove the encroachment over the public land on or before 12.05.2016. but the petitioner did not remove the encroachment and filed the present suit on 12.05.2016. Petitioner has no concerned with schedule '2' land and his version that he did not encroach the public land, is without any basis. Therefore, there is neither a *prima facie* case nor balance of convenience in favour of petitioner and no irreparable loss will cause to him, if injunction not granted. It is pertinent to mention here that the finding of this order will have no binding effect on further proceeding and the judgement of the present suit.

Accordingly the petitions dated 19.05.2016, 16.12.2017 and 16.05.2018 stand rejected.

Put up on

Sub Judge

count..... Heard both sides. The record is put up for order on petition dated 21 May 2018, at once.

Petitioner filed the petition under order 18 rule 16 of C.P.C. along with medical certificate and photocopy of reservation ticket. Petitioner submits that his witness namely Koushalya Devi wife of late Jagdeesh Sharma is defendant number 4 in this suit. She is a sick and old lady of more than 70 years. He further submits that her evidence is very essential and her condition is getting more

Election 02 of 2021

serious and there is probability that she might not be able to come to depose if the court will adopt the normal process. Therefore, in the interest of Justice she will be permitted to give evidence immediately.

Witness Koushalya Devi is present before the court. She is an old lady unable to move without support. She has a reservation ticket of 03 June 2018.

Considering her sickness and old age as well as the fact that she is leaving the jurisdiction of this court by tomorrow 03.06.2018, which is Sunday, the petition dated 21 May 2018, is allowed.

Sub judge

latter on Evidence on affidavit of defendant first set witness namely Koushalya Devi is filed, the copy of the same is served to the plaintiff. On repeated calls, Ld. Advocate of plaintiff appeared before the court and refused to cross examine and prayed for some time, as the witness is leaving the jurisdiction of this court by tomorrow. Hence, the prayer for time is rejected and witness is discharged.

Sub Judge

Latter on A petition is filed on behalf of plaintiff that he has to prefer CWJC before Hon'ble High Court Patna against the order on petition dated 21 May 2018. Therefore, reasonable time be given to him. Copy of the petition is served to the defendants. The petition is allowed.

Put up on

Sub Judge