

In the Court of Nasim Nazar, Sub-Judge, Narkatiaganj

Title Suit No 339/2009

Baldev Prasad.....Plaintiff

V/s

Mankeshwar Prasad and others.....Defendants

Date	Order	Remarks
29.11.2024	This case is put for the order on the petition filed by the plaintiff under Order 39 Rule 1 (C) and under section 151 of the C.P.C dated 29.02.2024 to restrain the defendants from making pucca structure over suit land by ad interim injunction. Moreover, defendants no-1 to 4 have also filed their rejoinder to the petition of the plaintiff dated 21.03.2024. Ld. Counsel for the plaintiff through its petition has submitted as follows :- That the plaintiff has filed the suit for declaration of right and title over the schedule No.01 land of the plaintiff which has been given at the foot of the petition and also for recovery of possession of the suit land. That the suit fixed for argument on 31.07.2017 but the defendants have filed frivolous petition only with a view to harass the plaintiffs and delay the disposal of the suit. That the learned court is custodian of the suit land but the defendants are adamant to change the nature of the suit land and making construction over the suit land and adamant to change the nature of the suit land and causing injury to the plaintiffs. That the plaintiff be treated part and parcel of this injunction petition and from perusal of the plaintiff and this petition your honour would be found that the plaintiffs have been able to present a good prima facie case and balance of convenience is in favour of the plaintiffs and if the defendants are not restrained from making any pucca structure over the suit land by ad-interim injunction the plaintiff will be put in great hardship and injury. With these averments the plaintiff has prayed to restrain the defendants from making pucca structure over the suit land by ad interim injunction. On the other hand the defendants from 1 to 4 have also filed their rejoinder as follows:-	

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Continue 29.11.2024	That present petition is quite malafide and vexatious and not at all maintainable either in the eyes of law and on facts and it is liable to be rejected out rightly. That plaintiffs have got no right to file the present petition of injunction, the petition is barred by law of res-judicata. Earlier the prayer of injunction of same effect was rejected by this learned court vide order dated 13-01-2020 and in view of rejection of same prayer the present petition is not tenable and fit to be rejected. That the petition is filed with entirely false, wrong, concocted and baseless allegation. Petition is filed with concealment of burning fact regarding rejection of earlier injunction petition vide order dated 13-01-2020 which is amounting to deceive the court and as such plaintiffs are not entitled to any relief. That the petition is filed with dishonest intention to put the defendants under undue harassment and pressure as well as to delay the disposal of the suit. That the written statement as well as earlier show-cause filed by the defendants be treated as part and parcel of the show-cause for better appreciation of the matter. That plaintiffs are rightless person and they have got no manner of any right and title over the suit land bearing R.S. plot no. 36. Your humble defendants are absolute owner of the suit land and they are in actual physical possession over the same in shape of their house and sahan. Admittedly the suit land is in possession of the defendants so question of any restrain order against them is unwarranted in view of provision made under order 39 Rule 1 (C) C.P.C. That the claim of plaintiff is contradictory. In present suit plaintiffs are claiming the suit land on the basis of sale deed dated 24-06-1950 executed by Jhabbulal in favour of Baldeo Prasad. Alleged sale deed is illegal, showy, inoperative and void and	
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Continue 29.11.2024	Baldeo Prasad did not acquire any right, title and possession over any portion of the suit land. In partition suit no. 190/2000 Baldeo Prasad was defendant and he contested the suit claiming that partition of his family property was effected vide compromised decree passed in partition suit no. 17/1953. By said compromised decree the suit land measuring 3 katha 12 dhur of plot no. 36 was subject matter and through compromise the said land is allotted to the share of Tilakdhari Prasad, Bhola Prasad, Gopalji Prasad, Krishna Prasad and Bachcha Prasad vide schedule no-06 of the compromise. Partition suit no. 190/2000 is decided in face of compromise passed in partition suit no. 17/1953. Therefore the claim of plaintiffs on the basis of sale deed dated 24-06-1950 is hit by law of res-judicata and estoppel and the plaintiffs are stopped under law to make any claim over the suit land. That it is humbly submitted that at the time of suit house of defendants was already in existence over some portion of the suit land and house was under construction which has already been constructed later on by the defendants, Immediate east of suit land bearing plot no. 36 survey plot no. 136 is situated and east to the plot no. 136 Narkatiaganj-Thori pitch road is situated. Part of plot no. 136 is in occupation of the defendants since the time of purchase of suit land by their father Satynarain Prasad through sale deed dated 14-09-1953. Defendants are presently making construction over the land of their possession bearing R.S. plot no. 136 but the plaintiffs have filed the injunction petition with sinister motive to restrain the defendants from making construction by taking aid of the court. The petition does not merit any consideration and no embargo can be put upon the defendants by way of ad-interim injunction. That under the facts and circumstances stated above it is abundantly clear that plaintiffs have got	
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Continue 29.11.2024	by the predecessor court and the injunction petition was dismissed (as has been mentioned earlier) and the case record was running smoothly. Meanwhile the defendant started construction work over the suit land and therefore the court ordered to maintain Status Quo with observation that it is paramount duty of the court to protect the suit land as after filing of the suit, the court becomes protector of the suit land (as has been mentioned earlier). And after this order the construction work was stopped and the case record is still pending for hearing and order of injunction petition. Thus it appears that after rejection of the injunction petition filed by the plaintiff, the defendants started the construction work over suit land by taking advantage of rejection of injunction petition. Further it also appears that plaintiff as well as defendants are more interested in injunction petition rather than assisting in disposing the suit due to which the instant suit is running for argument since 2017 and it also appears that if the Status Quo order is set aside or vacated then, the defendant may start his construction again over the suit land which is against interest of justice. Injunctions are an equitable remedy which means they are only available in cases of in-personam jurisdiction and the court has the discretion to grant an injunction and will balance the harm that would result without an injunction against the harm that would result with an injunction. It is also well settled principle that if a lis has been admitted for adjudication, then it becomes the duty of the court to protect the suit land. As far as the question of Res Judicata is concerned, it does not apply in Injunction petition because from bare perusal of order 39 Rule 1 & 2 clearly reveals that there is no statutory bar against the filling of second temporary injunction petition/application provided new facts have	
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