

IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.R. No. 16 of 2020

(Hiralal Mahto Vs. Vijay Krishna Sahay & Ors.)

CORAM: HON'BLE DR. JUSTICE S.N. PATHAK

(Through Hybrid Mode)

For the Petitioner : Mr. Shresth Gautam, Advocate.

08/Dated: 20.09.2024

This civil revision is directed against the order dated 29.02.2020, passed by the learned Principal District Judge, Giridih in Civil Miscellaneous Appeal No. 01 of 2019 whereby the court below has been pleased to dismiss the application dated-16.01.2019, filed under Order XLIII, Rule 1 (r) of the Code of Civil Procedure, praying for setting aside the order dated 20.12.2018 passed by the learned Additional Munsif, IX (Junior Division), Giridih, rejecting prayer of plaintiff for grant of temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

The petitioner is aggrieved by rejection of the temporary injunction on the ground that though it has been mentioned in the order that prima facie case is not made out and neither there is any irreparable loss nor any balance of convenience is made out and, as such, the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure was rejected.

Learned counsel for the petitioner submits that nothing has been mentioned that how prima facie case is not made out. No discussion has been made in the entire order. It has also been pointed out that in appeal, the appellate Court has decided the title and at paragraph 11, held as under:-

“11.Further, it is settled law that injunction order against true owner of the property is not sustainable, and here in the instant case in hand, the present appellant/plaintiff is the son of the said Lochan Mahto but as appears from perusal of the record, his father Lochan Mahto himself sold 3.00 acres of land under khata no. 33, plot no. 547 to defendant no. 1 vide registered sale deed no. 6295 dated 13.05.1988 and put

the purchaser in khas physical possession over the same. Under this circumstance, the plaintiff/appellant claims the land which was already sold by his father during his life-time. In support of their contentions, the respondents have filed some relevant documents as per list, which are available on the record.

In the aforesaid facts, circumstances, discussion as made above, I come to the conclusion and find and hold that Court below has considered the material available on the record and rightly rejected the petition dt. 21.02.2018 filed under Order 39 Rule 1 and 2 read with Section 151 C.P.C. Hence, I find no reason for causing interference in the impugned order dt. 20.12.2018 passed by the Court below. Therefore, there is no merit in the instant Civil Misc. Appeal and it is liable to be dismissed being devoid of merit. Hence it stands dismissed and impugned order dt. 20.12.2018 passed by the Court below is hereby upheld and confirmed.”

It is a settled law that injunction order against true owner of the property is not sustainable. It appears that ownership has been decided by the appellate Court, when the Suit is still pending. This Court is of the view that prima facie case is made out in view of the aforesaid findings of the Court below and the petitioner will be put to irreparable loss, if the order is not stayed.

By way of interim arrangement, till the next date of hearing, the order dated 29.02.2020 passed by the Principal District Judge, Giridih in Civil Miscellaneous Appeal No. 01 of 2019 is, hereby, stayed. The defendants are restrained from excavation at present.

Admit.

Issue notice to Respondent nos. 1 to 4, for which, requisites, etc. under registered cover with A/D as well as ordinary process must be filed within two weeks.

Put up this case in the first week of February, 2025.

(Dr. S. N. Pathak, J.)