

IN THE HIGH COURT OF JUDICATURE AT PATNA

Smt. Savitri Joshi and Others

vs.

Rameshwar Yagnik @ Lall Saheb and Anr

FIRST APPEAL No.131 of 2014

03 February 2023

(HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Issue for Consideration

Whether Defendants/Appellants are entitled for a grant of Temporary Injunction?

Headnotes

Code of Civil Procedure - Order XXXIX, Rule 1 and 2 – Principles related to Grant of Injunctions – interlocutory application on behalf of the defendants/appellants praying therein to restrain the respondents from alienating the suit land in any manner and to restrain them from forcefully dispossessing the appellants from the disputed land till final disposal of the first appeal.

**Held:** While considering an application for grant of injunction, the Court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties – in the present matter, there is no whisper in the written statement of the defendants in the court below that the plaintiffs have sold the property of any other Mauza rather it is an admitted position that the land of Mauzas allotted to the plaintiffs respondents have been sold by the defendants during the pendency of the suit, thus, the conduct of the defendants-appellants are such that they are not entitled for any relief - grant of injunction is an equitable relief - a person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction - appellants herein are unable to make out a prima-facie case as required for purpose of grant of interim injunction as they are purchasers of the suit property during pendency of the suit - having no prima-facie case, no balance of convenience lies in favour of the defendants-appellants and there would be no question of any irreparable loss or injury - Interlocutory Application dismissed. (Para – 18-20)

Case Law Cited

Mandali Ranganna & Ors. Vs. T. Ramachandra & Ors AIR 2008 SC 2291

.....Relied Upon.

**List of Acts**

Code of Civil Procedure

**List of Keywords**

Grant of Injunction – Alienation of Suit Land - Forceful Dispossession – Prima Facie Case - Balance of Convenience - Irreparable Injury - Equitable Relief – Conduct of Parties.

**Case Arising From**

Application for grant of Temporary Injunction.

**Appearances for Parties**

For the Appellant/s: Mr. Ranjan Kumar Dubey, Advocate  
For the Respondent/s: Mr. Jitendra Kishore Verma, Advocate

Headnotes Prepared by Reporter: Ghanshyam Advocate

**Judgment/Order of the Hon’ble Patna High Court**

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**FIRST APPEAL No.131 of 2014**

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|---------------------------------------|--------|-----|-------------|
| Smt. Savitri Joshi, and Ors           | ...    | ... | Appellants  |
|                                       | Versus |     |             |
| Rameshwar Yagnik @ Lall Saheb and Anr |        | ... | ...         |
|                                       |        |     | Respondents |

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**Appearance :**  
For the Appellant/s : Mr. Ranjan Kumar Dubey, Advocate  
For the Respondent/s : Mr. Jitendra Kishore Verma, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

16    03-02-2023                      **I.A. No.7169 of 2014**

This application has been filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure (hereinafter referred to as ‘the CPC’) on behalf of the appellants praying therein to restrain the respondents from alienating/encumbering the suit land in any manner and to restrain them from forcefully dispossessing the appellants from the disputed land till final disposal of the first appeal.

2. Mr. Ranjan Kumar Dubey, learned counsel for the appellants submits that the present appeal arises out of the judgment and decree dated 28.04.2014 passed in Title Suit No.72 of 2010. The learned Sub-Judge-IV, Bettiah at West Champaran has decreed the suit in terms of the decree passed in Title Suit No.159 of 1949. Learned counsel submits that the judgment and decree under appeal has been passed in terms of Order XII Rule 6 CPC. In this connection, he has drawn the attention of this Court



towards the order dated 28.04.2014 passed by learned Sub-Judge-IVth. It is submitted that on the said date, the defendant no.1 to 5 filed an application praying for adjournment on the ground that against the order dated 27.06.2014 passed by learned Sub-Judge, they had gone in CWJC No.15592 of 2013 to the Hon'ble High Court and the same was pending consideration. It is submitted that the learned Sub-Judge rejected the prayer for adjournment and proceeded to pass the impugned judgment under Order XII Rule 6 CPC and simultaneously delivered a 43 pages judgment decreeing the suit.

3. Mr. Dubey has questioned the conduct of learned Sub-Judge in passing the impugned judgment in haste. It is submitted that the learned trial court did not allow the parties to lead any evidence, oral or documentary. It is submitted that during the pendency of the present appeal, the respondents have indulged in selling the suit properties which has given rise to criminal cases also, hence, it would be appropriate to pass an order of interim injunction restraining the respondents from dealing with the properties. It is further submitted that the learned court below had rejected the injunction petition brought by the plaintiffs-respondents but there was no challenge to the said order by plaintiffs/respondents.

4. The case of the plaintiff, as stated is that one



Bindhyawasini Prasad Yagnik (Jani @ Bacchan Babu) had two wives. From first wife he got one son namely Durga Shankar Yagnik. Durga Shankar Yagnik had two marriages. From his first wife Rama Devi he got one son namely Tripurari Shankar Yagnik. From his second wife namely Manorma Devi, he got one son Arun and six daughters. Bindhyawasini Prasad Yagnik got three sons namely Rajeshwar, Rameshwar and Chandeshwar and one daughter from his second wife Krishna Kumari Devi. It is stated that Durga Shankar Yagnik died in the year 1989 leaving behind one son Tripurari Shankar Yagnik through his first wife Rama Devi, his second wife Manorma Devi and her son Arun Kumar Yagnik @ Bachhaji and six daughters.

5. It was Durga Shankar Yagnik who filed a Title Partition Suit giving rise to T.P.S. No.159 of 1949. The said suit was decreed by virtue of a compromise. In the said suit Schedule IV and Schedule VI were the properties of village 'Charihani' and 'Basantpur' respectively which were allotted to Rameshwar Yagnik and Krishna Kumari Devi. The family of second wife namely Rameshwar and Anup son of Chandeshwar filed T.S. No.72 of 2010. Durga Shankar and his legal heirs are the defendants in T.S. No.72 of 2010. In this suit the prayer is for declaration of title and confirmation of possession and for permanent injunction restraining the defendants from interfering



with the peaceful possession of the property disclosed in Schedule-II of the plaint. The plaintiffs-respondents claimed that they came in their exclusive possession over their respective lands and they are coming in peaceful possession of their allotted share. The plaintiffs alleged that the defendant no.1 in collusion with some other defendants and some anti-social elements and also in collusion with the revenue authorities got mutated their name after cancelling the name of plaintiff concealing the actual papers and they were intending to dispose of the land of Schedule -II on the basis of the said illegal jamabandi.

6. The defendants appeared and contested the suit taking more or less similar grounds. They raised the question of maintainability of the suit itself and it was contended that at the time of compromise decree in Title Suit No.159 of 1949, no abolition of Zamindari had taken place, therefore after Zamindari abolition the decree obtained in Partition Suit No. 159 of 1949 became inoperative and null. As regards the two gift deeds said to have been executed by Smt. Krishna Kumari Devi in favour of her step daughters, the plaintiff claimed that those were only showing documents and on that basis they had never come in possession. The defendants, however contested this and submitted that the gift deed dated 31.01.1962 is a good document and the alleged cancellation is having no legal force. The defendants, therefore,



prayed for dismissal of the suit.

7. It is submitted that after completion of pleadings issues were framed. During the pendency of the suit the plaintiff filed an application dated 07.04.2014 and prayed for disposal of the suit. The learned court below has decreed the suit vide impugned judgment and decree without giving any opportunity of leading evidence. The plaintiff-respondents are now negotiating with the local persons for sale of the lands.

8. The appellants are the legal heirs of Durga Shankar Yagnik from his second wife Manorma and some of the appellants are the purchasers through different sale deeds from the defendants of T.S. No.72 of 2010. They claimed that they are coming in peaceful possession of the disputed land. It is stated that on the basis of their purchase, they had filed an application under Order I Rule 10(2) CPC on 16.07.2010 which was allowed by the learned trial court vide order dated 19.01.2011 but the learned trial court had not given any opportunity to them to lead evidence. It is further stated that during the pendency of the suit, the plaintiffs filed an amendment petition which was allowed vide order dated 28.05.2013 subject to payment of cost against which the defendant no.1 to 5 filed a writ application being CWJC No.15592 of 2013. The plaintiffs never paid the cost, still the learned trial court allowed the plaintiff to incorporate the amendment and finally



decreed the suit vide impugned judgment holding that the judgment will be subject to the result of the order passed in CWJC No.15592 of 2013.

9. In course of argument, Mr. Dubey, learned counsel submits that the land allotted to the defendants-appellants in Partition Suit No. 159 of 1949 were sold by the plaintiffs. Learned counsel, however, admits that in the written statement filed in T.S. No. 72 of 2010, the defendants have not made any statement to the aforesaid effect. Learned counsel relies upon the judgments of the Hon'ble Supreme Court in the case of **Kishorsinh Ratansinh Jadeja v. Maruti Corpn. & Ors.** reported in **AIR 2009 SC 2882** and in the case of **Maharwal Khewaji Trust (Regd.), Faridkot v. Baldev Dass** reported in **AIR 2005 SC 104** to submit that to avoid multiplicity of litigation, this Court may restrain both the parties from changing the nature of the suit properties, alienation or transfer of the property.

10. Mr. Jitendra Kishore Verma, learned counsel has appeared on behalf of the respondents and opposed the application. It is submitted that Durga Shankar Yagnik, the father of the defendant no.1 to 5 was the plaintiff in Partition Suit No.159 of 1949 in which a compromise decree was passed on 03.01.1951. Learned counsel has drawn the attention of this Court towards paragraph '16' of the judgment wherein the learned court below



has recorded that “Admittedly an earlier partition suit no.159/49 instituted & same was compromised among the ancestral of the parties interse.....”. The final decree prepared in the said suit has been quoted in the judgment under appeal. Learned counsel submits that in the said suit the defendant no.2, 3 and 4 were the sons of Sri Pandit Vindhyawasini Prasad Yagnik @ Bachan Babu (defendant no.1) from his second wife and the defendant no.5 was Smt. Krishna Kumari Devi, the second wife of the defendant no.1. The plaintiff in the said suit was Durga Shankar who was his son from his first wife. The claim was for effecting partition in respect of 1/6th share in the disputed properties and for allotment of separate Takhta. The compromise petition filed in the said suit has also been reproduced in the judgment under appeal.

**11.** Mr. Verma, learned counsel has drawn the attention of this Court towards Schedule No. IV which was allotted to defendant no.3 Rameshwar Yagnik. It is pointed out that he got ‘8 Ana’ of Panditpur Banaras Tauzi No.1401 and ‘16 Ana’ of Mauza ‘Charihani’. Similarly under Schedule No.VI, the defendant no.5 Smt. Krishna Kumari Devi got the entire ‘Basantpur’ Mauza. Learned counsel submits that the present suit was brought by Rameshwar being plaintiff no.1 and son of Chandeshwar (plaintiff no.2). The ‘Basantpur’ Mauza had 107.51 acres whereas ‘Charihani’ had 81.29 acres. The present suit was only for



‘Basantpur’ and ‘Charihani’ Mauza. The plaintiffs have got respect for the judgment and decree passed in T.P.S. No.159 of 1949.

**12.** Learned counsel submits that one of the appellants i.e. appellant no.30 in this case is Arun Kumar Yagnik, son of late Durga Shankar Yagnik. It is further submitted that the compromise petition as also compromise decree passed in Partition Suit No.159 of 1949 was never under challenge. It is submitted that in the Partition Suit No. 159 of 1949, in the compromise petition the properties were demarcated and possession were given accordingly. It is submitted that the defendants have not shown any respect to the compromise decree. 22 sale deeds have been executed by the defendants during pendency of the T.S. No. 72 of 2010 and the entire ‘Charihani’ and ‘Basantpur’ properties have been sold out by the defendants after filing of the written statements on 13.08.2010. He has relied upon a judgment of the Hon’ble Supreme Court in the case of **Mandali Ranganna & Ors. Vs. T. Ramachandra & Ors** reported in **AIR 2008 SC 2291** (paragraph 18) to submit that in the matter of interim injunction the conduct of the parties may also be seen. In this case, according to him, the defendants have executed the sale deeds during the pendency of the suit after filing of their written statement which shows that they are not litigating the matter with clean hands. Learned counsel has further relied upon a judgment of this Court



in the case of **Kanhaiyaji Sahay & Ors. Vs. Kamla Prasad & Another** reported in **1990 (1) PLJR 661** and judgment of the Hon'ble Supreme Court in the case of **Best Sellers Retail (India) Private Limited Vs. Aditya Birla Nuvo Limited and others** reported in **(2012) 6 SCC 792** (paragraph 29 and 30) to submit that by mere sale of the land no irreparable loss/injury is going to take place because law of lis pendens would take care of such persons. Mr. Verma, learned Advocate has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Inderjit Singh Grewal versus State of Punjab and Anr.** reported in **(2011) 12 SCC 588** to submit that to get rid of the judgment and decree passed in Title Partition Suit No. 159 of 1949 the only option available to the defendants-appellants was to approach appropriate forum. To avoid the said judgment and decree it requires to be set-aside by the competent court.

**13.** Learned counsel submits that the defendants-appellants are not entitled for interim injunction which is in the nature of an equitable relief. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Hanumanthappa Vs. Muninarayanappa** reported in **(1996) 11 SCC 696**. It is submitted that so far as the passing of the judgment under order XII Rule 6 is concerned, a bare perusal of the said provision would show that it has been couched in a very wide term



and the expression “admission of facts either in pleading or otherwise whether orally or in writing” has been incorporated in wider terms and in such cases the admission can be inferred from the facts and circumstances of the case. He has relied upon the judgment of the Hon’ble Supreme Court in the case of **Karam Kapahi & Ors. Vs. M/S. Lal Chand Public Charitable Trust & Another** reported in **AIR 2010 Supreme Court 2077**. It is further submitted that in fact it is the plaintiffs-respondents who is suffering despite having a judgment and decree in his favour. Thus, it is submitted that the application seeking interim injunction is liable to be dismissed.

#### **Consideration**

**14.** Having heard learned counsel for the parties and on perusal of the records, this Court finds that the present interlocutory application has been filed on behalf of the defendants-appellants for restraining the plaintiffs-respondents from alienating/encumbering and transferring the suit land during pendency of the appeal and from changing the status of the suit land.

**15.** Learned counsel for the appellants has given much emphasis on the fact that the learned court below has decreed the suit under Order XII Rule 6 CPC without there being any proper application under the said provision on behalf of the parties. He



has questioned the delivery of 43 pages judgment simultaneously while rejecting the prayer for adjournment on 28.04.2014. To this Court, it appears that this submission may only be considered at the time of final hearing of the appeal. For the present, this Court would only see whether the appellants have made out a case for injunction under Order XXXIX Rule 1 and 2 CPC.

**16.** The materials available on the record would show that earlier the Title Partition Suit giving rise to Title Partition Suit No.159/1949 was filed by Durga Shankar Yagnik (the father of appellant no.30). In the said suit, a compromise was filed and the suit was decreed in terms of the compromise. The Schedule IV and Schedule VI therein were the properties of village 'Charihani' and 'Basantpur' respectively which were allotted to Rameshwar Yagnik (plaintiff no.1) in Title Suit No.72 of 2010 and his mother Krishna Kumari Devi. The properties were demarcated in the compromise petition and it is the case of the plaintiffs-respondents that the possession were also given accordingly. It is not in dispute that the said compromise decree passed in Title Partition Suit No.159/1949 was never challenged. The Plaintiffs filed Title Suit No. 72 of 2010 for declaration of title and confirmation of possession and further prayed for permanent injunction restraining the defendants from interfering in peaceful possession of the plaintiffs over Schedule II land. Schedule II land are the land of



Mauza 'Basantpur' measuring area 107.51 acres and Mauza 'Charihani' measuring area 81.29 acres. Admittedly these two Mauzas were allotted to Krishna Kumari Devi and Rameshwar Yagnik respectively in Partition Title Suit No.159/1949.

17. The learned court below has recorded that Arun Yagnik (defendant no.1) who is son of Durga Shankar Yagnik alienated most of the suit land to his vendees during pendency of the suit i.e. in the year 2011 without getting any prior permission of the court. It has been held that alienation without prior permission during lis pendens is collusive inter se defendants to mislead the court. It is not denied that all the 22 sale deeds were executed after the defendant no.1 had already entered appearance in Title Suit No.72 of 2010. The learned court below has further recorded that Durga Shankar Yagnik had executed sale deed in favour of Sita Devi with respect to Mauza Pachgachhia and Rampur on 28.08.1962 for the total area about 9 bigha 10 katha and 17 dhur. The learned trial court has gone on to record that Durga Shankar Yagnik and Rajeshwar Prasad yagnik were not allotted any land in the land of Pachgachhia but both had executed the sale deeds beyond their allotted share in the decree of Partition Suit No.159 of 1949. The learned court below has, decreed the Title Suit No. 72 of 2010 in terms of pronouncement of compromise decree of Partition Suit No. 159 of 1949 and the



defendants-appellants have been permanently restrained to interfere in peaceful possession of the plaintiffs over the suit land.

18. Learned counsel for both the parties have relied upon a number of judgments. The contention of learned counsel for the appellants is that in the given circumstance, if the injunction is not granted and further sale deeds are executed by the plaintiffs-respondents in respect of the suit property, it may give rise to multiplicity of the litigation. The contention of learned counsel for the plaintiffs-respondents is that there are overwhelming materials showing that the plaintiffs-respondents were allotted Schedule IV and Schedule VI properties in Title Partition Suit No.159 of 1949, there is no whisper in the written statement of the defendants in the court below that the plaintiffs have sold the property of any other Mauza rather it is an admitted position that the land of Mauzas allotted to the plaintiffs-respondents have been sold by the defendants during the pendency of the suit, thus, the conduct of the defendants-appellants are such that they are not entitled for any relief.

19. This Court, at this stage would reproduce paragraphs '18' and '22' of the judgment of the Hon'ble Supreme Court in the case of **Mandali Ranganna and others** (supra):-

“18. While considering an application for grant of injunction, the Court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case,



balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.

Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The Courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the Courts is imperative. Contentions raised by the parties must be determined objectively.

**22.** In *Seema Arshad Zaheer and others v. Municipal Corpn. of Greater Mumbai and others* ((2006) 5 SCC 282), this Court held:

“30. The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff; (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff’s rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiffs rights is compared with or weighed against the need for protection of the defendants rights or likely infringement of the defendant’s rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiffs’ conduct is free from blame and he approaches the Court with clean hands.”

(See also *Transmission Corpn. of A.P. Ltd. v.*



Lanco Kondapalli Power (P) Ltd. ((2006) 1 SCC 540)”

**20.** This Court would agree with the contention of learned counsel for the plaintiffs-respondents that the conduct of the defendants-appellants are such that they are not entitled to get the equitable relief of interim injunction against the plaintiffs-respondents. The defendants are unable to make out a prima-facie case as required for purpose of grant of interim injunction. They are purchasers of the suit property during pendency of the suit. Having no prima-facie case, no balance of convenience lies in favour of the defendants-appellants and there would be no question of any irreparable loss or injury.

**21.** The plea of the defendants-appellants that in case the interim injunction is not granted, it may give rise to multiplicity of litigations would not appeal this Court as the appellants would not be entitled for equitable relief of interim injunction merely on this ground without showing a prima-facie case in their favour.

**22.** The Interlocutory Application is dismissed.

**(Rajeev Ranjan Prasad, J)**

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