

(2005) 10 PAT CK 0035
In the Patna High Court
Case No : M.A. No. 205 of 2000

Krishna Lal Yadav and Others

APPELLANT

Vs

Shambhu Kumar Yadav and Others

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 41 Rule 11, 151

Citation : (2006) 3 BLJR 2275 : (2005) 4 PLJR 716

Hon'ble Judges : M.L. Visa, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.L. Visa, J.—This appeal has been heard under Order XLI, Rule 11 of CPC alongwith IA No. 2533 of 2000 for its final disposal at that stage itself with the consent of parties.

2. The appellants have filed this appeal against order dated 13.03.2000 passed by learned Sub-Judge I, Supaul in Title Suit No. 4 of 1999 issuing temporary injunction restraining the defendants/appellants from causing any disturbance and interference in possession of plaintiffs-respondents over the suit land during the pendency of the suit. The plaintiff-respondent No. 1 has filed Title Suit No. 4 of 1999 in the Court of Sub Judge I, Supaul for partition for his share out of the land described in schedule II of plaint which comprises lands of new plots No. 2470, 2473, 2738 and 2324 measuring seven kathas seven dhurs. The case of plaintiff/respondent No. 1 is that he purchased the land described in schedule II from Bhallu Yadav who was a descendant of Pyarey Gope, the common ancestor of parties and after purchase, he is coming in possession of the land. His further case is that defendants-appellants purchased the lands of plots No. 2473 and 2324 having total area eight kathas five dhurs from defendants-appellants No. 4, 5 and 6 who are descendants of Bhaddi who was grandson of Pyarey Gope the common ancestor of parties and since then all the troubles and disputes arose

between them and appellants. The plaintiff/respondent filed a petition under Order XXXIX, Rules 1 and 2 read with Section 151 of CPC, praying therein to restrain the defendants causing any interference and disturbance in his possession in the suit properties. He also filed another petition praying therein to order for maintaining status quo in respect of suit land. Defendants filed replies to aforesaid petitions and the Court below, after hearing both the parties, passed the impugned order temporarily restraining defendants/appellants from causing any disturbance and interference in possession of plaintiff over suit land during the pendency of the suit.

3. In this appeal, defendants-appellants filed IA No. 2533 of 2000 for staying the operation of impugned order. The case of defendants-appellants is that they, in reply to petition filed by plaintiff-respondent No. 1 for the issuing injunction, had specifically pleaded that they are having their houses, place for feeding cattle, one tubewell over the suit land. Their further case is that the plaintiff/respondent in his plaint has admitted that C S Khata No. 617 of mauza-Barhara was earlier recorded in the name of Ishwar Yadav and Dhorik Yadav but due to non-payment of rent, the lands of this khata were auctioned and were purchased by ex landlord who after purchase came in possession over the same and subsequently the land of this khata appertaining to C S plot No. 2933 having one bigha, three katha and fourteen dhurs, C S plot No. 2814 having eight katha, ten dhurs and C S plot No. 2847 having seven katha eight dhurs besides other plots having total area of five bigha twelve katha one dhur was settled in favour of Ishwar Yadav and Dhorik Yadav by ex landlord who put them in possession and, thereafter, the Jamabandi was created in the name of Ishwar Yadav and Dhorik Yadav for five bigha, twelve katha, one dhur of land and at the time of vesting of zamindari, return with respect to lands in question was filed in the name of Ishwar Yadav and Dhorik Yadav by ex landlord and plaintiff-respondent No. 1 has nowhere in his plaint mentioned anything about the settlement in favour of Bhallu Yadav, brother of Ishwar Yadav but still he claims that he purchased suit lands detailed in schedule II of the plaint from non else but from his own grandfather Bhallu Yadav. According to them, suit land was never settled with Bhallu Yadav alleged vendor of plaintiff-respondent No. 1.

4. Admittedly, plaintiff-respondent No. 1 has filed suit for partition and from the genealogical table given in the Memo of Appeal, it appears that parties are descendants of common ancestor Pyare Gope. From the impugned order, it appears that the Court below has held that appellants did not purchase any land of plots No. 2470 and 2738 as per their sale deeds therefore, they cannot have any claim of title and possession with respect to these lands and plaintiff being first purchaser in the year, 1992 that is five years before the purchase by defendants-appellants is having better title and claim over the land but at the same time, the court below has further observed that whether the plaintiffs or defendants are original purchasers from original owners is subject matter of final adjudication of the suit and which of the portion was purchased by whom is also the subject matter of final adjudication on the basis of their sale deeds. Again, it

has observed that plaintiff is found to have a prima facie case for adjudication. All these observations appear to be contradictory to each other, especially in view of the fact that at the time of passing impugned order, defendants-appellants had not filed their written statement. As discussed above, the Court below has held that defendants-appellants did not purchase any land of plots No. 2470/2738. The case of defendants-appellants is that they purchased eight katha five dhurs of land of C S plots No. 2473 and 2324 and the plaintiff is also claiming the lands of these two plots and by adding lands of some other place has laid claim over seven katha seven dhurs of land whereas according to defendants-appellants, total area of C S plot No. 2473 and 2324 alone is eight kathas five dhurs.

5. Considering the aforesaid facts, I find that contesting parties are descendants of a common ancestor and suit pending before the Court below is a partition suit. In this view of the matter, holding a co-sharer in exclusive possession of a part of suit land and, thereafter, restraining other co-sharers from causing any interference or disturbance of particular co-sharer in respect of part of suit land does not seem proper.

6. In the result, this appeal is allowed and the impugned order dated 13.03.2000 passed in Title Suit No. 4 of 1999 by Sub Judge I, Supaul is hereby set aside.