

(2024) 03 PAT CK 0059

In the Patna High Court

Case No : Civil Miscellaneous Jurisdiction No. 534 Of 2020

Sahdeo Rai

APPELLANT

Vs

Ishika Kumari

RESPONDENT

Date of Decision : 13-03-2024

Acts Referred:

Constitution of India, 1950 — Article 227
Code of Civil Procedure, 1908 — Section 151

Citation : (2024) 03 PAT CK 0059

Hon'ble Judges : Arun Kumar Jha, J

Bench : Single Bench

Advocate : Naresh Chandra Verma, Santosh Kumar

Final Decision : Allowed

Judgement

1. The present Miscellaneous petition has been filed under Article 227 of the Constitution of India for quashing the order dated 22.02.2020 passed by the learned District Judge, Vaishali at Hajipur in Civil Miscellaneous No. 12 of 2020 whereby and where under the learned District Judge has allowed the petition filed by the respondent No. 1.

2. Learned counsel for the petitioner submits that the father of the petitioner, the original plaintiff, filed Title Suit No. 217 of 2019 before the learned Sub- Judge I, Hajipur for declaration of title and also for declaring the two sale deeds dated 05.02.2019 and 06.02.2019 as illegal, void and without any title and not binding upon the plaintiff. The plaintiff also sought injunction from interfering in possession and for transferring the suit land. During pendency of the suit, original plaintiff filed an application for injunction for restraining the defendant from transferring the suit land as the defendant has been trying to sell the suit land. Notice was issued on the injunction matter and the parties were directed to maintain status quo. Defendants appeared and filed rejoinder to the injunction petition. Learned counsel further submits that the learned Sub-Judge heard the matter and fixed 20.01.2020 as the date for orders. On 20.01.2020 the learned

Sub Judge XVI passed the order to maintain status quo and the record was transferred to learned Sub Judge IV. Thereafter the learned Sub-Judge IV heard the matter on 24.01.2020 and affirmed the order to maintain status quo regarding the suit land. Thereafter Misc Case No. 12 of 2020 was filed by respondent No. 1 on 03.02.2020 before the learned District and Sessions Judge, Vaishali, Hajipur with a prayer to direct the learned Sub Judge to re-hear the injunction matter on the point of admission and to pass fresh order. The learned District Judge entertained the application under Section 151 of the Code of Civil Procedure (in brief 'the Code') calling for report from the learned Sub-Judge XVI and thereafter by the impugned order dated 22.02.2020 allowed the miscellaneous case.

3. Learned counsel for the petitioner further submits that the learned District Judge did not consider the fact that he was not having jurisdiction to entertain the matter in miscellaneous proceeding and he had no power to pass the impugned order. Since it was an order deciding the injunction petition, only a miscellaneous appeal was maintainable against such order. However, the learned District Judge entertained the application ignoring the fact that even no appeal could lie before him as the suit was valued at Rs. 1.25 Crore. Learned counsel further submits that the respondent No. 1 suppressed the order dated 24.01.2020 from the learned District Judge in which she conceded to proceed with the suit and hence no further need was felt for hearing of the injunction matter. Learned counsel further submits that moreover, even if it is taken that no final orders were passed on the injunction petition, even against such interlocutory orders, the learned District Judge has got no jurisdiction to entertain any application and the jurisdiction lies with this Court only under Article 227 of the Constitution of India. Learned counsel further submits that moreover, the learned District Judge proceeded in the matter without issuing notice to the petitioner and passed the orders against Principles of Natural Justice.

4. Learned counsel appearing on behalf of respondent No. 1 vehemently opposes the submission made on behalf of the petitioner. Learned counsel for the respondent No. 1 submits that there is no infirmity in the impugned orders. Learned counsel submits that no final order has been passed on the injunction petition of the plaintiff and since order dated 24.01.2020 only reiterated the order dated 20.01.2020 passed by the learned Sub-Judge XVI, there was no need to mention the said order before the learned District Judge. Learned counsel further submits that the injunction petition is still pending and the petitioner may move for disposal of the said petition before the Court of learned Sub Judge.

5. Having regard to the rival submissions of the parties and also considering the material available on record, I am of the considered opinion that the present petition must succeed. The order of the learned District Judge, Vaishali is without jurisdiction since he passed the order against the specific provisions of law. Only

for the reason that the learned District Judge was having authority to transfer the case, he cannot be allowed to interfere with the orders of the learned Sub Judge on merits. The learned District Judge lacked the jurisdiction to entertain the application filed by the respondent No. 1 so as to interfere in the order dated 24.01.2020 whether it was an interlocutory or final order. Moreover, from the facts and circumstances the order dated 20.01.2020 appears to be an interlocutory order so far as injunction is concerned. On this aspect the learned District Judge has committed an error and exceeded his jurisdiction.

6. Further, I must mention that the orders passed by the learned Courts of Subordinate Judge XVI, Hajipur on 20.01.2020 and learned Sub Judge IV, Hajipur on 24.01.2020, leave much to desire. Once a transfer order has been received by the learned Sub Judge XVI he should not have ventured into the matter of injunction with regard to the suit property without specifying the reason. Further if he felt the matter to be urgent, he should have passed a proper order since the matter was already fixed for orders on injunction petition on 23.12.2019. Still propriety demanded that he should not have passed any orders after receiving the transfer orders if the same was received prior to passing the order. Thereafter, the learned Sub Judge IV took a convenient way and passed the order dated 24.01.2020 without clarifying the matter whether the injunction petition was still pending or it has been disposed of and merely reproducing the orders of predecessor would not suffice for the purpose. Further, the learned District Judge appeared to be in much hurry since he did not issue any notice to the petitioner or waited for his appearance before passing of such orders ignoring the Principles of Natural Justice.

7. In view of the aforesaid discussion, the order impugned dated 22.02.2020 passed by the learned District Judge, Vaishali at Hajipur in Civil Miscellaneous No. 12 of 2020 is not sustainable since it has been passed by the learned District Judge, Vaishali exceeding his jurisdiction and against the established canons of law and hence the same is set aside and the Court in seisin the matter is directed to pass orders on the injunction petition of the plaintiff after giving ample opportunity of hearing to both the parties.

8. With the aforesaid observation and direction, the present petition stands allowed.