

IN THE HIGH COURT OF JUDICATURE AT PATNA

Saumitra Singh And Anr

vs.

Hare Ram Singh And Anr

FIRST APPEAL No. 7 OF 2022

19 November, 2024

(Hon'ble Mr. Justice Shailendra Singh)

Issue for Consideration

Prayer for granting STATUS QUO.

Headnotes

Code of Civil Procedure, 1908—Order XXXIX Rules 1 and 2—temporary injunctions—suit land belonged to original raiyat (deceased), appellants claimed themselves to be descendants of original raiyat (deceased)—defendants 2nd set also claiming themselves to be the descendants of original raiyat (deceased)—appellants failed to prove their relationship with the original raiyat—learned trial court did not frame an issue on the disputed relationship between the appellants and original raiyat (deceased), which was the basis of the claim of the appellants—an appeal is deemed to be a continuation process of the suit—after the passing of learned trial court's decision in the suit filed by the appellants, some portion of the suit land has been transferred to several persons by the respondents through several sale deeds.

Held: if a *list* has been admitted for adjudication then it becomes the duty of the court to preserve the subject-matter of the litigation so that the same can be made available at the time of final adjudication—during the pendency of the suit, the defendants were restrained from transferring the suit land and the instant appeal is a continuation of the suit—suit filed by the appellants has been dismissed, the defendants do not get a right to transfer the remaining suit land during the pendency of appeal—respondents are restrained from transferring, alienating and encumbering the remaining suit property in favour of others without the permission of Court during the pendency of appeal—I.A. allowed. **(Paras 12 and 13)**

Case Law Cited

Maharwal Khewaji Trust (Regd.), Faridkot vs. Baldev Dass, AIR 2005 SC 104; Dev Prakash & Anr. vs. Indra & Ors., (2018) 14 SCC 292; Dharam Nath Ojha & Ors. vs. Raghunath Ojha, (2001) 2 PLJR 268—**Relied upon.**

Best Sellers Retail (India) Private Ltd. vs. Aditya Birla Nuvo Ltd and Ors., (2012) 6 SCC 792 **Referred To.**

List of Acts

Code Of Civil Procedure, 1908

List of Keywords

First Appeal; transferring; alienating; encumbering; raiyat; sale deed.

Case Arising From

Interlocutory application in F.A. no 07 of 2022

Appearances for Parties

For the Appellant/s: Mr. J.S. Arora, Sr. Adv; Mr. Manoj Kumar, Adv; Mr. Rakesh Kr. Adv.

For the Respondent/s: Mr. Shashi Shekhar Dvivedi, Sr. Adv.; Mr. Parth Gaurav, Adv; Mr. Govind Raj Shahi, Adv; Mr. Manogya Singh, Adv

Headnotes prepared by the Reporter: Abhash Chandra, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No. 7 of 2022

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1. Saumitra Singh Son of Late Kumar Bimal Prasad Singh resident of Village- Rajauli, P.O. and P.S.- Rajauli, District- Nawada.
 2. Aasha Singh @ Asha Devi Wife of Late Sumant Kumar Singh resident of Village- Rajauli, P.O. and P.S.- Rajauli, District- Nawada.
 3. Kislay Kishore Son of Late Sumant Kumar Singh resident of Village- Rajauli, P.O. and P.S.- Rajauli, District- Nawada.
 4. Prem Shankar Sharan Singh Son of Late Uma Shankar Sharan Singh resident of Village- Rajauli, P.O. and P.S.- Rajauli, District- Nawada.
 5. Diwakar Prasad Singh Son of Late Janardan Prasad Singh resident of Village- Rajauli, P.O. and P.S.- Rajauli, District- Nawada.

... .. Appellant/s

Versus

1. Hare Ram Singh Son of Sri Krishna Singh alias Krishna Deo Singh resident of Village- Rajauli, Babhantoli, P.O. and P.S.- Rajauli, District- Nawada.
2. Smt. Dropati Devi Wife of Krishna Singh alias Krishna Deo Singh resident of Village- Rajauli, Babhantoli, P.O. and P.S.- Rajauli, District- Nawada.
3. Siya Ram Singh Son of Krishna Singh alias Krishna Deo Singh resident of Village- Rajauli, Babhantoli, P.O. and P.S.- Rajauli, District- Nawada.
4. Ajit Kumar Son of Chandra Deep Singh resident of Village- Debaspora, P.O.- Baghi, P.S. Katrisarai, District- Nalanda.

Defendants 1st Set-Respondents 1st Set

5. Ram Pravesh Singh son of Harihar Singh resident of Village- Puri, P.O. Pawapuri, P.S.- Giriyak, District- Nalanda.
6. Balimiki Singh son of Harihar Singh resident of Village- Puri, P.O. Pawapuri, P.S.- Giriyak, District- Nalanda.
7. Sanjay Prasad son of Late Chandrika Prasad Singh resident of Village- Puri, P.O. Pawapuri, P.S.- Giriyak, District- Nalanda.
8. Ranjay Prasad son of Late Chandrika Prasad Singh resident of Village- Puri, P.O. Pawapuri, P.S.- Giriyak, District- Nalanda.
9. Manjay Prasad son of Late Chandrika Prasad Singh resident of Village- Puri, P.O. Pawapuri, P.S.- Giriyak, District- Nalanda.
10. Bipin Kumar son of Late Chandrika Prasad Singh resident of Village- Puri, P.O. Pawapuri, P.S.- Giriyak, District- Nalanda.
11. Naveen Kumar son of Late Chandrika Prasad Singh resident of Village- Puri, P.O. Pawapuri, P.S.- Giriyak, District- Nalanda.
12. Smt. Mani Devi Wife of Sri Bachhu Singh resident of Village- Puri, P.O. Pawapuri, P.S.- Giriyak, District- Nalanda.
13. Rabi Devi Wife of Mundrika Singh resident of Village- Puri, P.O. Pawapuri, P.S.- Giriyak, District- Nalanda.
14. Manju Devi Wife of Surendra Kumar resident of Village- Amjhari, P.S.



Sirdalla, District- Nawada.

Defendants 2nd Set-Respondents 2nd Set

... .. Respondent/s

Appearance :	
For the Appellant/s	: Mr. J.S. Arora, Sr. Adv. Mr. Manoj Kumar, Adv. Mr. Rakesh Kr, Adv.
For the Respondent/s	: Mr. Shashi Shekhar Dvivedi, Sr. Adv. Mr. Parth Gaurav, Adv. Mr. Govind Raj Shahi, Adv. Mr. Manogya Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

13 19-11-2024

Re : I.A. No. 1 of 2022

The present interlocutory application has been filed on behalf of the appellants praying for passing an order of *status quo* by way of ad-interim injunction for restraining the respondents from alienating and encumbering the suit property and also from changing the physical feature of the suit property during the pendency of the present appeal.

2. Mr. J.S. Arora, learned senior counsel appearing for the appellants/plaintiffs submits that the appellants filed a Title Suit bearing No. 427 of 2018 for declaration of right, title and interest over the suit land as detailed in Schedule-I of the plaint as well as challenged six deeds of sale, admittedly, executed by defendants 2nd set in favour of the defendants 1st set by declaring the same to be null and void. The defendants/respondents not only sold out the lands in question prior to the institution of the



suit but during the pendency of the suit, also sold certain properties concerned to the suit land and as such, a petition under Order 39, Rules 1 and 2 of the Code of Civil Procedure for grant of ad-interim injunction and passing an order of *status quo* in regard to the suit property was filed before the learned trial court that was allowed vide order dated 14.03.2019 but subsequently, the learned trial court vacated the said order of injunction vide order dated 30.05.2019. Against, the said order dated 30.05.2019, appellants/plaintiffs preferred an appeal bearing Misc. Appeal No. 397 of 2019 before this Court which was heard and the prayer for injunction was allowed by order dated 13.05.2020. Here, it is important to mention that in that appeal, the order was reserved on 02.09.2019 and finally the judgment was delivered on 13.05.2020 and during the intervening period, the defendants/respondents again transferred some parts of the suit land through different sale deeds.

3. Learned counsel further submits that the defendants/respondents challenged the order dated 13.05.2020 before the Hon'ble Apex Court vide SLP No. 8280 of 2020 in which the Hon'ble Apex Court did not interfere with the judgment of this Court passed in Misc. Appeal No. 397/2019 and in the result, the said SLP was dismissed and from all these



facts, it is clearly evident that this Court as well as the Hon'ble Apex Court was of the view that the suit land ought not to have been changed or alienated during the pendency of the suit and it is an established law that an appeal is considered to be continuation of the suit. It is further submitted that after the passing of the impugned judgment, the respondents again proceeded to transfer the suit land and executed several sale deeds in respect of some parts of the suit land and the copies of the sale deeds have been filed with the supplementary affidavit and the same is sufficient to show that the respondents 2nd set are very interested in creating title in suit land in favour of other persons and if they are permitted to do so, there is a great possibility of multiplicity of litigations or suits in between both the parties.

4. Learned counsel further submits that it is a settled principle of law that none of the parties of the suit should be permitted to change the nature of the suit land by transferring or alienating the same as such transfer may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In support of this submission, learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court passed in the case of



Maharwal Khewaji Trust (Regd.), Faridkot vs. Baldev Dass
reported in **AIR 2005 SC 104** and the relevant paragraph upon which the reliance has been placed is being reproduced for ready reference:

“10. Be that as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be the conditions on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this



regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored.”

As per the appellants’ counsel, the above mentioned principle laid down by the Hon’ble Supreme Court was followed in the case of **Dev Prakash & Anr. vs. Indra & Ors.** reported in **(2018) 14 SCC 292**.

5. It is further submitted by learned counsel for the appellants that the law is well settled that if a *lis* has been admitted for adjudication then it becomes the duty of the court to preserve the subject-matter of the litigation by an appropriate order so that the same is available at the time of final adjudication and the decree does not become a barren one. In support of this contention, learned counsel has placed reliance upon the judgment of this Court passed in the case of **Dharam Nath Ojha & Ors. vs. Raghunath Ojha** reported in **(2001) 2 PLJR 268** and the relevant paragraph upon which the reliance has been placed is being reproduced for ready reference:-

“Having considered the rival



submissions, I am of the view that this application ought to be allowed. Law is well settled that if a lis has been admitted for adjudication, then it becomes the duty of the Court to preserve the subject matter of the litigation by an appropriate order so that the same is available at the time of final adjudication and the decree does not become a barren one. Secondly,”

6. Learned counsel further submits that one, namely, Rohan Singh was a common ancestor of the appellants who had two sons, namely, Baidyanath Singh and Modan Singh and the plaintiffs are from the branch of Baidyanath Singh and Kanhai Singh was from the branch of Modan Singh who died issueless whereas the defendants had set up a different genealogy of Kanhai Singh for making their claim of title in the suit properties and the genealogy of the said Kanhai Singh was the main question but in this regard, no issue was framed by the learned trial court and without discussing the evidences, the learned trial court observed that the plaintiffs failed to prove their relationship with the original *raiyat* Kanhai Singh while the defendants 2nd set Ram Pravesh Singh & Others established their relationship with Kanhai Singh. But while making the said conclusion, no discussion of the evidence was made. As such,



all the three main ingredients which are required to be fulfilled to make one eligible to get a relief under Order 39, Rules 1 and 2 of the Code of Civil Procedure are complete in this matter.

7. On the other hand, Mr. Shashi Shekhar Dvivedi, learned senior counsel appearing for the respondents submits that the appellants have not shown the sufficient materials to show the *prima facie* case being existing in their favour and in this regard, the learned trial court's finding in the impugned judgment in the paragraph Nos. 8.25 and 8.26 is relevant. In the present petition, the appellants have simply mentioned the history of allowing or rejecting the appellants' prayer for injunction during the course of pendency of the suit by different courts up to the Hon'ble Supreme Court which cannot be a ground to make a certain conclusion as to whether any *prima facie* case is made out or not in favour of the appellants. The appellants based their claim as being the relatives of late Kanhai Singh but failed to produce any evidence in support of their said pleading before the learned trial court and even the possession of the appellants over the suit property was not found by the learned trial court. Though during the pendency of the suit, an injunction order was passed in favour of the appellants but now the situation has changed as the suit of the appellants has been



dismissed by the learned trial court, so, merely because of this appeal, the respondents cannot be kept away from the fruits of the impugned judgment and decree as the law is well settled by the Hon'ble Supreme Court that mere filing of the appeal does not suspend the effect of a judgment and decree passed in a case. Admittedly, the suit land belonged to one late Kanhai Singh and further, admittedly, he died issueless and the defendants 2nd set on account of being relatives of late Kanhai Singh performed all the last rites of the said Kanhai Singh and came in possession over the property in dispute.

8. Learned counsel further submits that the appellants are very skimming persons and litigants and taking advantage of their proximity to the place of the disputed land, they started disturbing the possession of the defendants 2nd set, due to this reason, the said defendants thought it would be wise to sale it because the suit land was away from their house and finally, they sold the some part of the suit land to defendants 1st set by executing different sale deeds who have come in possession over the same and mutation also has been allowed in their favour.

9. Learned counsel further submits that merely creating a title in favour of some other persons by the



respondents 2nd set during the pendency of this appeal it cannot be deemed that a *prima facie* case to grant of injunction has been made out in favour of the appellants as it is a well established law that the judgment of the appeal will be binding upon the transferee also as per the provisions of section 52 of the Transfer of Property Act and the appellants are now not entitled to claim that an irreparable injury will cause to them if the suit land is transferred to others. Learned counsel further submits that in the present time, the first appeal takes several years to be decided by this Court, so, if the respondents are restricted or barred from alienating or transferring the suit land, it will deprive them from the fruits of impugned judgment and decree which are in their favour and they will come in the position of loser if the prayer of the appellants is allowed.

10. Learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court passed in the case of ***Best Sellers Retail (India) Private Ltd. vs. Aditya Birla Nuvo Ltd and Ors.***, reported in (2012) 6 SCC 792 and the relevant paragraphs upon which the reliance has been placed is being reproduced for ready reference : -

“29. Yet, the settled principle of law is that even where prima facie case is in favour of the plaintiff, the Court will refuse temporary injunction if the injury



suffered by the plaintiff on account of refusal of temporary injunction was not irreparable.

30. In Dalpat Kumar & Anr. v. Prahlad Singh & Ors. [(1992) 1 SCC 719] this Court held: (SCC p. 721, para 5)

“5. ... Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in ‘irreparable injury’ to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages.”

11. Heard both the sides and perused the impugned judgment, pleadings of both parties and evidences available on the case record of the trial court. The suit land undisputedly belonged to one, namely, Late Kanhai Singh. The plaintiffs, who are the appellants here, based their claim on this ground that they are descendants of late Kanhai Singh while the defendants 2nd set (5 to 9) are claiming themselves to be the descendants of



late Kanhai Singh.

12. Learned counsel for the respondents has vehemently argued that the appellants have not made out a *prima facie* case in their favour as the plaintiffs/appellants failed to prove their relationship with the original *raiyat* Kanhai Singh and in this regard, no any kind of evidence was given by them and even they were not found having physical possession over the suit land and in this regard, the observations made by the learned trial court in the paragraph Nos. 8.25, 8.26 and 8.42 are relevant. Though the observations made by the learned trial court in the said paragraphs are against the appellants' claim but the learned trial court did not frame an issue on the disputed relationship between the plaintiffs and late Kanhai Singh which was the basis of the claim of the plaintiffs and in the said paragraphs, there is no detail discussion of the evidences upon which the learned trial court based its findings and it is a very surprising fact that in the paragraph No. 8.1, the learned trial court deemed the said disputed relationship to be the main issue but even then, no particular issue on this point was framed, so, merely by the said observations made by the learned trial court, it cannot be deemed that the plaintiffs/appellants have not made out even a *prima facie* case in their favour. It is well settled



principle of law that an appeal is deemed to be a continuation process of the suit. Though the suit filed by the appellants was dismissed by the learned trial court but merely by this fact it cannot be deemed that the dispute in between both the parties has got finality as the same is still subjudiced/pending before this Court and the evidences adduced by both the parties are to be reappreciated by this Court while determining the main questions. It is an admitted position that after the passing of learned trial court's decision in the suit filed by the plaintiffs, some portion of the suit land has been transferred to several persons by the respondents through several sale deeds and in this regard, specific details have been given by the appellants' counsel and the law is well settled that if a *lis* has been admitted for adjudication then it becomes the duty of the court to preserve the subject-matter of the litigation so that the same can be made available at the time of final adjudication. In view of the past conduct of the respondents, there is great possibility of further transfer of the remaining suit land by the respondents in favour of others which may be a cause of multiplicity of litigations in between several persons including both the parties and if the remaining suit land is left open for transfer during the pendency of this appeal then there is possibility of the final adjudication to



become a barren one and an irreparable loss may occur to the appellants if they succeed. During the pendency of the suit, the defendants were restrained from transferring the suit land and the instant appeal is a continuation of the suit and merely by this fact that the suit filed by the appellants has been dismissed, the defendants do not get a right to transfer the remaining suit land during the pendency of this appeal.

13. Though the instant appeal may take some period to be decided finally but merely by this reason the suit land cannot be left open for transfer by the defendants/respondents during the pendency of this appeal. If the respondents are restrained from transferring or alienating the suit land then it may not cause any inconvenience to them as the suit land is said to be in their possession as per the observation of the learned trial court while on the other hand, on account of transfer of the remaining suit land, a great inconvenience may occur to the appellants as they are claiming their title in the suit land and accordingly, in view of the present circumstances, the balance of convenience is in favour of the appellants. Thus, this Court finds substance in the prayer of the plaintiffs/appellants, hence, the defendants/respondents are hereby restrained from transferring, alienating and encumbering the remaining suit property in



favour of others without the permission of this Court during the pendency of this appeal. The defendants-respondents will have a liberty to make a prayer before this Court to transfer any part of the suit land if an urgent and legal necessity arises in their favour which justifies the requirement of such transfer.

14. In result, I.A. No. 1 of 2022 stands allowed.

Re : F.A. 7 of 2022

15. List this appeal under appropriate heading in due course on its turn.

(Shailendra Singh, J)

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