

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.604 of 2017**

Yogendra Kumar Srivastava, son of Late Brigunath Lal, resident of 2/64,
Vishwashand, Gomti Nagar Lucknow (U.P)..

... .. Petitioner/s

Versus

1. Chitranjan Kumar, Son of Late Bhagwati Lal resident of Village- Nehruwa Khurd, Post - Bhatwa, Thana - Katya, Dist - Gopalganj.
2. Banwari Mishra, Son of Late Vyas Mishra, Resident of Village+ Post - Bhatwa, Thana - Katya, Dist - Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anirudh Kumar Sinha, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

Date : 16-01-2024

Heard learned counsel for the petitioner on the point of admission and I intend to dispose of the instant petition at the stage of admission itself.

2. The instant petition has been filed by the petitioner-defendant challenging the order dated 21.01.2017 passed by the learned Civil Judge, Senior Division (Sub Judge)-X, Gopalganj in Title Suit No.596 of 2007 whereby and whereunder the petition dated 30.08.2016 filed by the petitioner-defendant under Section 19 of the Code of Civil Procedure (hereinafter referred to as 'CPC') was rejected with cost of Rs.1500/-.

3. The case of the petitioner-defendant as it appears from the records is that the petitioner-defendant filed the petition dated 30.08.2016 contending that a five room house



was constructed by the defendant no.1 on 1 Katha land of Plot No.533, Khata No.65 under Mauza-Neharua Khurd, Circle-Panchdewari, P.S.-Kateya, District-Gopalganj and Khesra No.407, Area 6 Katha 14 Dhur under the said Mauza was left vacant, but the said house of the defendants was demolished by the plaintiffs through Banwari Mishra and some illegal constructions were carried out on Plot No.407. It was further contention of the petitioner that at the time of demolition, the said land was *sub-judice* and compensation of Rs.5 lacs was claimed under Section 19 CPC. The contention of the petitioner-defendant was not accepted by the learned trial court which rejected the petition imposing a cost of Rs.1500/- upon the petitioner-defendant. Aggrieved by the said order of the learned trial court, the petitioner-defendant has filed the instant petition.

4. It has been submitted by the learned counsel for the petitioner that the learned trial court did not consider the facts of the case and accepted the false statement of the respondents. The learned trial court was duty bound to assess the damage and consider in the interest of justice, if any matter is under-trial and any illegal act occurs or causes detriment to either of the parties, the same should be looked into by the court concerned. The petitioner-defendant informed the court and sought damages under Section 19 CPC, but the learned trial court did not



consider the same and rather imposed cost on the petitioner-defendant. Furthermore, the learned trial court did not consider the Commissioner's report and also statement of the owner of 'JCB' which was used to demolish the house and it relied upon the police report which was false. In these facts and circumstances, the order of the learned trial court is not sustainable and the same be set aside.

5. Perused the record.

6. From perusal of record, it transpires that the petitioner-defendant claimed that his father constructed a house of five rooms on Plot No.533, Khata No.65. The petitioner-defendant further claimed that the respondents filed partition suit and the petitioner-defendant had possession of Khata No.65 and the respondents wanted to dispossess the petitioner-defendant from the said land and on 15.09.2015, the respondents broke and destroyed the house of the petitioner-defendant by 'JCB'. The petitioner-defendant also claimed that he was in possession of the recording of conversation with the owner of the 'JCB', who admitted the act of demolition of the house of the petitioner-defendant. The petitioner-defendant gave an application for lodging the FIR, but no investigation was carried out. Thereafter, on an application filed on behalf of the petitioner-defendant, *status quo* was ordered on 12.04.2016.



Further, on an application dated 27.01.2016 filed on behalf of the petitioner-defendant under Order 26 Rule 9 CPC, the Commissioner's report was called for and it says there was house on disputed plot. Thereafter, application dated 30.08.2016 was filed for compensation on the basis of Commissioner's report as well as the statement of JCB owner.

7. Perusal of the impugned order shows the learned trial court has clearly held on facts that some general allegations have been made without supporting affidavit as well as without disclosing the date of demolition and also without mentioning what action has been taken by the defendants before the local authorities after such demolition. The learned trial court relied on the police report dated 23.02.2016 submitted before the Superintendent of Police, Gopalganj vide D.R.No.1306/2016 dated 23.02.2016 that the dilapidated house present on Plot No.407, Khata No.65, Mauza-Neharua Khurd collapsed during rainy season and the ruins of the same was present on spot. The learned trial court further held that the natural crumbling of the dilapidated house was taken as blessings in disguise by the petitioner who filed the false case and misused the process of law. From whatever has been mentioned about the Commissioner's report in paragraph 11 of the present petition, it appears that the collapse of the house was due to natural



causes because the said description is silent about the demolition by external manual agency as the Commissioner's report just says there was house on disputed plot no.533. Further, foundation stone was found on excavation and the residue of the broken house was laid on the plot at the then time. The same could not be used to infer that the manual demolition was carried out at the spot. The statement of the 'JCB' owner purportedly recorded would not prove anything in the light of the specific police report regarding collapse of the house due to natural causes.

8. In view of the aforesaid discussions, I do not find the impugned order suffers from any infirmity as the same has been passed after consideration of all the aspects of the matter and, therefore, the same is affirmed.

9. Hence, I do not find any merit in the instant petition and, accordingly, the same is dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	N/A
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