

5022
13/12/13

In the High Court of Judicature at Patna.

(Miscellaneous Judicial Jurisdiction)

M.J.C.NO. _____ OF 2013.

Bibi Rasool Khatun,
Md. Iftakhar Ali Petitioner

Versus

Gopal Mina
Upendra Kumar and others Opposite Parties.

Subject:- Contempt Matter.

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In the High Court of Judicature at Patna.

(Miscellaneous Judicial Jurisdiction)

M.J.C.No. _____ of 2013.

In the matter of an

application under Order 39

Rule 2(A) of the Code of

Civil Procedure

and

In the matter of :-

- ① Bibi Rashida Khatun W/o Lt. Md. Suleman
② Md. Iftakhar Alam Son of Md. Suleman, Resident of

Village-Medheli, Police Station-Almaganer, District-

Madhupura.

..... Petitioner.

Versus

1. *Gopal Mishra*
Sd/- *Gopal Mishra*, District Magistrate, Madhupura.

2. *Rudra Singh*
Sd/- *Rudra Singh* Esq., Superintendent of Police, Madhupura

3. Deepak Kumar Seh, Sub Divisional Officer,

(Udki shunganj).

4. Manoj Kumar Sudhansu, Deputy Superintendent of

Police.

5. Surendra Prasad Choudhary, C.O. Alamnagar.

6. ^{Suresh Prasad Ram} ~~Favin Singh~~, Officer-in-Charge, Alamnagar.

7. Md. Abdus Satter son of Md. Hanifuddin, Resident

of Village-Madheli, Police Station-Alamnagar,

District-Madhepura.

8. The State of Bihar High Collector
Madhepura
..... Opposite Parties.

To,

The Hon'ble Ms. Justice Rekha M. Doshi,

the Chief Justice of the High Court of

Judicature at Patna and her Companion

Justices of the said Hon'ble Court.

The humble petition on behalf

of the aforesaid petitioners.

Most Respectfully sheweth :-

1. That this application is being filed for initiating contempt proceeding against Opposite parties for deliberately disobeying the order dated 15.2.2006 passed by Bench of this Hon'ble Court in M.A. No.446 of 2001 affirming the order dated 17.8.2001 passed by Sub Judge, Madhepura in T.S.No.14 of 2001 by which defendant 2nd party was directed to maintain status quo till disposal of the suit.

2. That Plaintiff/petitioner filed T.S.No. 14 of 2001 in the Court of Sub Judge, Madhepura against defendant for partition after declaration of their right, title and interest in the land as mentioned in Schedule-II to IV of the plaint.

3. That short facts of the plaintiff case is that one Sk.Sayed Ali acquired 44 Bigha 16 Dhura land and later on he died leaving behind his daughter

Bibi Chulho and wife Bibi Akamunnisa. Bibi Chulho inherited the entire property of Sk. Sayed Ali and she also inherited the property of her mother and husband. Later on Bibi Chulho also died leaving behind her four sons and two daughters who inherited the who are plaintiff 1 and Defendant No.1 to 4.

4. That it is further case of plaintiff/petitioner is that defendant No.2 with mala fide intention created some forged and fabricated documents in the name of his son-in-law (Defendant No.9 with respect to the property of Bibi Chulho. It has further been stated that during revisional survey defendant No.1 in collusion with his brother got manipulation made in the survey Khatiyas with intention of eliminate the name of plaintiff No.1 and her sister and sister's heirs and later on family arrangement was between plaintiff no.1 and Defendant 1st party in which plaintiff No.1 was

allotted R.S.Plot No.941,1321 and 379 and subsequently Plaintiff No.1 sold Plot No.941 to Plaintiff No.2 by a registered sale deed dated 8.12.1998. It is further case of the plaintiff is that Defendant No.1 to 4 in collusion with defendant No.9 allowed Defendant No.9 to dig a partition of suit for using the earth for his brick-kiln. Hence suit has been filed.

5. That after summon Defendant no.9 appeared and filed his written statement and contesting the suit raising question of maintainability of the suit itself.

It is the case of defendant is that Bibi Chulho never inherited property of Sk.Sayed Ali and Sk.Sayed Ali during his life time orally gifted his land to his grandsons who are defendant No.1 to 4 and got the revisional survey entry made in the name of donee.

6. That it is further case of Defendant is that Sk.Harfuddin, husband of Bibi Chulho had right,

title and possession over Plot No.941 besides other lands of Schedule-IV of plaint and he gifted the land to all his four sons who are Defendant No.1 to 4. and Sk.Badrudin, Defendant No.2 by a registered sale deed dated 11.7.2000 sold hand of Plot No.941 and delivered the possession of the same to Defendant No.9 and further purchase of this land Defendant no.9 constructed latrin with tank over it and he took on lease Plot No.903 and 1511 from Sk.Israil and Sk.Badrudin for the purpose of drying the bricks and keeping parth brought from different places. He denied to have ever due Plot No.941, 1124, 929, 903 and 1511 for the purpose of manufacturing bricks. According to Defendant by virtue of sale deed and deed of lease of Plot No.941, 903, and 1511 he was using the lands only for drying the mud bricks and keeping the soils. His further case is that he has got perfect right, title and possession over the

purchased land of Plot No.941 and his name has been mutated and he is paying rent and he is getting rent receipt also.

7. That during pendency of the suit plaintiff filed petition under Order 39 Rule 1 and 2 of Code of Civil Procedure prayer therein to restrain the Defendant No.9 from digging the land mentioned in injunction petition and from installing the brick kiln.

8. That Defendant No.9 filed rejoinder to injunction petition and raised question of maintainability of the same and prayed for its dismissal.

9. That it is important to mention here that during pendency of the proceedings in the Court below an Advocate Commissioner was appointed and learned Court below after going through the evidence and hearing the parties in detail restrain the private Opposite Party vide order dated 17.8.2001 from digging the earth or constructing brick kiln over the suit land and

Defendant No.1 was ordered to maintain status quo.

They were further directed not to sell or change feature of the suit land till disposal of the suit.

10. That against the restraint order Defendant No.1 filed M.A.No.446 of 2001 before this Hon'ble Court in which after petitioner appeared and contested the same. Bench of this Hon'ble Court after hearing the parties in detail dismissed the M.A.No.446 of 2001 vide his order dated 15.2.2006.

A true copy of the order

dated 15.2.2006 passed in M.A.

No.446 of 2011 is annexed here-

with and marked as Annexure-1

to this petition.

11. That against the said order dated

15.2.2006 passed in M.A.No.446 of 2011 Defendant No.

No.9 filed S.L.P.(Civil) No. 6223 of 2006 which also heard and dismissed vide order dated 17.4.2006.

A true copy of order dated 17.04.2006 is annexed herewith and marked as Annexure-'2' to this petition.

12. That inspite of aforesaid facts and circumstances of the case and knowing this fact that restrain order has been confirmed upto Hon'ble Supreme Court Defendant No.9/Opposite Party No. deliberately/intentionally digging the disputed land as such petitioner has complained about the same before different authority. On the application petitioner I.3.wrote a letter vide letter dated 27.11.2006 to hold an enquiry and to take necessary action.

A Photo copy of the Letter dated 27.11.2006 is annexed herewith and marked as Annexure

Annexure-3' to this petition.

13. That inspite of the aforesaid direction Superintendent of Police, Madhepura did nothing hence I.G. again wrote a letter dated 12.1.2007 to Superintendent of Police directing him to take necessary action and do the needful.

A Photo copy of the order dated 12.1.2007 is annexed herewith and marked as Annexure '4' to this petition.

14. That Superintendent of Police, Madhepura vide Memo No.2431 dated 4.10.2007 directing the Deputy Superintendent of Police, Udakishunganj to take appropriate steps with regard to complain case as made by petitioner.

A Photo copy of the Letter dated 4.10.2007 is annexed

which they are liable to be punished.

-12-

It is, therefore, prayed that your Lordships may graciously be pleased to issue Notice to Opposite Parties and after hearing the party/parties be pleased to punish the Opposite Party/parties for intentionally/deliberately violating the order dated 15.2.2006 Passed by Bench of this Hon'ble Court in M.A.No.446 of 2001.

And/or

Be pleased to pass such other order/orders as your Lordships may deem fit and proper.

And for this, the petitioner shall ever pray!

AFFIDAVIT.

I, Md. Iftakhar Alam, aged about 47 years, Son of Md. Suleman, Resident of Village-Madheli, Police Station-Alamnagar, District-Madhepura, do hereby solemnly affirm and state as follows:-

1. That I am Petitioner in this case and as such am well acquainted with the facts and circumstances of the case.
2. That the contents of this petition have been read over and explained to me in Hindi which I have fully understood the same and the statements of facts made therein are true to my knowledge and belief.
3. That the Annexures are true/photostat copies of their respective originals.

(3)

Mudali

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Serial No. of Order	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order.
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28. 15.02.2006

1

IN THE HIGH COURT OF JUDICATURE AT PATNA
M. A. No. 446 of 2001
Md. Abdus Sattar Appellant
Vs. Respondents
Bibi Rashida Khatoon and ors..

For the appellant : M/s Kumari Amita and Sunil Kumar Singh.
For the respondents : M/s Mohan Prasad and M. S. Hoda.

When this case was listed under the heading for hearing under Order XLI Rule 11 of the Code of Civil Procedure and with the consent of the parties, was heard for final disposal of appeal at this stage and is therefore being disposed of finally by this order.

2. The appellant has preferred this appeal against the order dated 17.3.2001 passed by the Sub-Judge, Madhepura in Title Suit No. 14/2001 allowing the prayer of plaintiffs for grant of injunction and passing order directing the appellant who was defendant 2nd party in the aforesaid suit to maintain status quo over the disputed land and not to sell or change the feature of the same till the disposal of the suit.

3. Brief facts of the case are that plaintiffs/respondent Ist set filed Title Suit No. 14/2001 before the Sub Judge, Madhepura for partition after declaration of their right,



M.A. No. 446/01

C. Sch. III-5)

Serial No. of Order-	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order.
		<p style="text-align: center;">2</p> <p>title and interest in the land mentioned in Schedule II to IV of the plaint. According to the plaintiffs, one Sk. Sayed Ali acquired 44 bighas 16 dhurs of land and died leaving behind his daughter Bibi Chulho and wife Bibi Akamunnisa. Bibi Chulho inherited the entire property of Sk. Sayed Ali and she also inherited the property of her mother and husband and after her death her property was inherited by her four sons and two daughters who are plaintiff No.1 and defendants No. 1 to 4. Defendant No.2 with malafide intention created some forged papers in the name of his son-in-law who is defendant No.9 in respect of property left by Bibi Chulho. During the revisional survey operation defendant No.1 in collusion with his brothers got manipulation made in the survey khatiyani with intention of eliminate the name of plaintiff No.1 and her sister and sister's heirs and later on family arrangement was made between plaintiff No.1 and defendant Ist party in which plaintiff No.1 was allotted R/S. Plot No. 941, 1321 and 379 and later on plaintiff No.1 sold plot No. 941 to plaintiff No.2 by a registered sale deed dated 8.12.98. Defendant Nos. 1 to 4 in collusion with defendant No.9 allowed the defendant No.9 to dig</p>	

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Serial No. of Order	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order.
		<p style="text-align: center;">3</p> <p>a part of suit land for using the earth for his brick-kiln. Hence the plaintiffs filed the suit.</p> <p>4. Defendant No.9 appeared and filed his written statement stating therein that Bibi Chulho never inherited property of Sk. Sayed Ali and Sk. Sayed Ali during his life time orally gifted his land to his grandsons who are defendant Nos. 1 to 4 and got the revisional survey entry made in the name of donee. His further case is that Sk. Harifuddin, husband of Bibi Chulho, had right title and possession over plot No. 941 besides other lands of Schedule IV of plaint^{and} he gifted the land to all his four sons who are defendants No. 1 to 4 and Sk. Badruddin, defendant No.2 by a registered sale deed dated 11.7.2000 sold land of plot No. 941 and delivered the possession of the same to defendant No.9 and after purchase of this land defendant No.9 constructed latrine with tank over it and he took on lease plot No.903 and 1511 from Sk Israil and Sk Badruddin for the purpose of of drying the bricks and keeping earth brought ^{soils} from different places. He denied to have ever dug plot Nos. 941,, 1124, 929, 903 and 1511 for the purpose of manufacturing bricks. According to him, by virtue of sale deed and deed of lease of plot Nos. 941, 903 and 1511 he</p>	16

M.A. No. 446/01

A. C. Sch. III-5)

Serial No. of Order.	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order.
		<p style="text-align: center;">4</p> <p>was using the lands only for drying the mud bricks and keeping the soils. His further case is that he has got perfect right, title and possession over the purchased land of plot No. 941 and his name has been mutated and is paying rent and obtaining rent receipt for the same.</p> <p>5. During the pendency of the suit the plaintiffs filed a petition for injunction praying therein to restrain defendant No.9/appellant from digging land mentioned in the injunction petition and installing the brick-kiln thereupon. Defendant No.9 by filing show cause opposed this prayer and a Pleader Commissioner was appointed for local inspection and after hearing the parties the court below passed the impugned order restraining the appellant from digging the earth or constructing brick-kiln over the suit land. Defendant No.1 was ordered to maintain status quo and was further directed not to sell or change feature of the suit land till disposal of the suit.</p> <p>6. The court below while passing the impugned order considered some admitted facts. The fact that suit land belonged to Sk. Sayed Ali is admitted by the parties. Plaintiff No.1 is the son of Bibi Chulho who was daughter of Sk Sayed Ali is also not in dispute. The case of</p>	<p>27</p>

M.A. No: 446/01

P. H. C. Sch. III-5)

Serial No. of Order	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order.
		<p style="text-align: center;">5</p> <p>plaintiffs is that after the death of Bibi Chutamber property was inherited by her four sons and two daughters who are plaintiff No. 1 and defendant Nos. 1 to 4 whereas the case of appellant is that during his life time Sk Syed Ali had orally gifted the suit land in favour of defendant No. 1 to 4. The court below considering the aforesaid fact observed that plaintiff is a ^{her} more original land owner whereas case of appellant is based on oral gift which is the matter to be decided in the suit and it found prima facie case in favour of the plaintiffs. It also accepted the plea of plaintiffs that if suit land is sold the plaintiffs will suffer irreparable loss. On the basis of all these facts the court below passed order of injunction directing the appellant to maintain status quo and not to sell or change the feature of the suit land till disposal of the case.</p> <p>7. I find no illegality or any irregularity in the impugned order by which appellant has been directed to maintain status quo during the pendency of the suit.</p> <p>8. In the result, I find no merit in this appeal which is accordingly dismissed.</p>	<p>18</p>

Ap. See and do the needful
 D
 19/1/06

Sd/- M. L. VISA, J.

ENTRUSTED TO BE TRUE PHOT. COPY
 Manjeet Singh
 For Joint Registrar (J)
 23/2/2006
 Authorized Under Sec 2 of 1971
 Jaleed
 23/2/2006
 8/92/21/25

Handwritten signature and circled number 43

19

833219

ITEM NO.19 COURT NO.10 SECTION XVI

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6223/2006

(From the judgement and order dated 15/02/2006 in MA No. 446/2001 of The HIGH COURT OF JUDICATURE AT PATNA, certified to be correct)

MD. ABDUS SATTAR

VERSUS

BIBI RASHIDA KHATOON & ORS.

Special
Assistant Registrar (Genl.)
14.12.06
Supreme Court of India

Petitioner(s)

Respondent(s)

(With appln(s) for exemption from filing G.T. and with prayer for interim relief)

Date: 17/04/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. SHRIKRISHNA
HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Petitioner(s) Mr. S.B. Sanyal, Sr. Adv.
Mr. Braj Kishore Mishra, Adv.
Mr. Abhishek Yadav, Adv.
Ms. Aparna Jha, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

The order of the High Court under challenge states that the parties shall maintain "status quo", which means that the parties shall maintain the status quo ante as on the date of the order of the High Court.

In view of this, the Special Leave Petition is dismissed.

(Signature)
(Rajesh Dhan)
Court Master

(Signature)
R. Bhatia
(Radha R. Bhatia)
Court Master
18/4/06

M. 18/4/06
cc
18/4/06

क्रमांक 3880/सी-आर.

आरक्षी महा निरीक्षक का कार्यालय, दरभंगा प्रदेस, दरभंगा।

लहेरियासराय, दिनांक 27/11/06.

सेवा में,

आरक्षी अधीक्षक
मधेपुरा।

विषय- जमोन में बखरन मिट्टी काट कर चिमनी मट्टा के लिए ईट बनाये जाने
के विरोध करने पर बून-बुराबा पर उठाए जाने के संबंध में।

उपर्युक्त विषय के संबंध में बीवी रसोदा खातून पति मो. तुनेमान शरहम, सा.
मधेली, धाना-आलमनगर, जिला-मधेपुरा का प्राप्त परिवाद पत्र दिनांक 14-11-06 मूल
में अनुलग्नक सहित संलग्न है। परिवाद में वर्णित बिन्दुओं को जांच करा लो जाय।
जांच के क्रम में सही पाये जाने पर कानूनी कार्रवाई को जाय तथा को गह्र कार्रवाई के
साथ मूल परिवाद लौटाया जाय।
अनुलग्नक-यधोपरि।

आरक्षी महा निरीक्षक
दरभंगा प्रदेस, दरभंगा।

प्रतिनिधि-1. आरक्षी उप-महा निरीक्षक, कोशी देस, सहला को सूचना एवं आवश्यक
क्रियायें।

बीवी रसोदा खातून द्वारा मो. इफ्तखार आलम, ग्राम-मधेली, धाना-
आलमनगर, जिला-मधेपुरा को सूचना।

~~12/11/07~~

[Handwritten Signature]

AY

2)

क्रमांक 173 / सी. आर.

आरक्षी महा निरीक्षक का कार्यालय, दरभंगा प्रखण्ड, दरभंगा।

लहेरियासराय, दिनांक - 12/11/07

सेवा में,

आरक्षी अधीक्षक
मोहरा।

बीबी रसीदा खातून बति स्व० मो० सुलेमान द्वारा मो० इफ्तखार अहम
ग्राम मयैली मो० मयैली थाना आलमनगर जिला मोहरा का प्राप्त बरिवाद बत्र गूल
अनुलग्नक सहित संलग्न है। बरिवाद बत्र में वर्णित बिन्दुओं की जांच कराई ली जाय।
जांच के क्रम में सही पायेजाने पर कानूनी कार्रवाई ली जाय तथा ली गई कार्रवाई के
साथ गूल बरिवाद बत्र लौटाया जाय।

अनुलग्नक :- ० पथोब री।

[Handwritten Signature]
12/11/07

आरक्षी महा निरीक्षक
दरभंगा प्रखण्ड, दरभंगा।

- प्रतिलिपि :-
1. आरक्षी उप-महा निरीक्षक, कोशी क्षेत्र, सहरसा को सूचनार्थ एवं आवश्यक क्रियार्थ।
 2. बरिवादी बीबी रसीदा खातून द्वारा मो० इफ्तखार अहम, ग्राम - मयैली मो० मयैली थाना आलमनगर जिला मोहरा को सूचनार्थ।

क्रमांक 2431 तिथि 22/10/07

पुलित अधीक्षक का कार्यालय, गधपुरा ।
गधपुरा, दिनांक- 4/10/07

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सेवा में,

अनुगण्डल पुलित पदाधिकारी,
उदा किशनगंज ।

संबंधित:-

सहायक निबंधक, बिहार राज्य चुपना आयोग, पटना का पत्रांक-11310-
13/07 रा10 इत कार्यालय का क्रमांक-प10 1259/गो0 दिनांक-21.7.07
गु0आ0 दिनांक-11.7.07 प10 162/गो0 दिनांक-7.2.07 एवं प10-143/गो0
दिनांक-7.2.07 तथा पुलित महा निरीक्षक दरभंगा प्रखेत्र, दरभंगा का क्रमांक
-3880/गो0आर0 दिनांक-27.11.06

विषय:-

आवेदिका बीवी रतीदा खानम पति गो0 तुलेगानगरद्वारा ता0 मधेली -
थाना आलमनगर का परिदाद पत्र-जमीन में जबरन मिट्टी काटकर चिमनी
बूँटा के लिये ईट बनाये जाने के विरोध करने पर धुन खराबी करने पर उता-
-र होने के सम्बन्ध में ।

22/10/07
A.X.07

उपर्युक्त संकेत एवं विषय के आलोक में सूचित करना है कि विषयांकित विन्दु

पर जाँच कर कृत कार्रवाई की चुपना डानाध्यक्ष बख्शर आलमनगर द्वारा तयपित किया गया
है किमें आवेदिका के आरोप को डानाध्यक्ष द्वारा तयपित जाने का उल्लेख किया गया है,
परन्तु जाँच प्रतियेदन अपूर्ण है । जाँच प्रतियेदन के आलोक में कोई कार्रवाई नहीं किया गया है
ऐसी स्थिति में बिहार राज्य चुपना आयोग के उक्त संकेताधीन पत्र द्वारा आवेदिका का प्राप्त
आवेदन/पुलित महानिरीक्षक दरभंगा प्रखेत्र, दरभंगा उक्त संकेताधीन द्वारा प्राप्त आवेदन एवं -
डानाध्यक्ष आलमनगर द्वारा जाँच प्रतियेदन मूल में तेलगनकर अग्रतर कार्रवाई हेतु भेजी जा रही
है ।

अतः उपर्युक्त परिप्रेक्ष्य में आदेश दिया जाता है कि डानाध्यक्ष, आलमनगर
को जनाकर तेलगन पत्र/अनुगण्डल अनुगण्डलों में उल्लेखित विन्दुओं पर आवश्यक अग्रतर कार्रवाई -
तुनिगियत करते हुए कृत कार्रवाई की चुपना 24 घण्टे के अन्तर्गत अधोहस्ताधरी के अलोकनार्थ
विशेषदूत के माध्यम से शीघ्र उपलब्ध करावें ताकि वांछित चुपना सम्बन्धित आवेदिका/विभाग
को उपलब्ध कराया जा सके ।

अनुलग्नक:- यकीपरि ।

4-10-07
पुलित अधीक्षक, गधपुरा ।

herewith and marked as

Annexure-'5' to this petition.

15. That again recently Opposite Party/ Defendant started to make construction of boundary wall over Plot No.929, Khata No.139(Old) 61 (New) and he is continuously making construction and this petitioner is running pillar to post.

16. That inspite of complain before the competent authority to take necessary and effecting steps against Defendant/Opposite Party so that order of this Hon'ble Court may be complied they did nothing.

17. That in the facts and circumstances as stated above it is clear that all the Opposite parties in collusion with each other have intentionally/deliberately violated the order dated 15.2.2006 passed by Bench of this Hon'ble Court in M.A.No.446 of 2001 for which they are liable to be punished.