

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.698 of 2016**

Arising out of PS.Case No. -50, 60 Year- 2015 Thana -Birpur District- BEGUSARAI

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Ramanuj Sharma, Son of Late Ram Prasad Sharma, Resident of village - Maida Babhangama, P.S. Birpur, District - Begusarai

.... .... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Begusarai
3. Sub-Divisional Officer, Begusarai
4. Deputy Collector, Land Reforms, Begusarai
5. Circle Officer, Birpur (Barauni), District - Begusarai
6. Lalo Sahni, Son of Late Mahabir Sahni, Resident of Village-Maida Babhangama, P.S. Barauni, District - Begusarai

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Dronacharya, Advocate.

For the Respondent/s : Mr. S. Raza Ahmed, A.A.G.-V

Mr. Vishwambhar Prasad, A.C. to A.A.G. IX

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA**


ORAL JUDGMENT

**Date: 31-08-2016**

Heard learned counsel for the parties.

2. Petitioner has sought a direction from this Court for directing the respondents to provide proper and adequate security and further restrain Respondent No. 6 from interfering with the right, title and peaceful possession of the petitioner over the lands described in the writ application.

3. It is averred by the petitioner that one Ful Kumari Devi sold land pertaining to Khata No. 226, Plot No. 650 measuring an area of 1 Bigha, 8 Kathas and 5 dhurs for a consideration of Rs.



10,000/- and a registered sale-deed was executed on 22<sup>nd</sup> of December, 1983 in favour of the wife of the petitioner but before the purchase of the land, Ful Kumari Devi and her minor daughter had filed a suit for partition in which preliminary decree was passed. Subsequently, final decree was passed on 17.04.1980 and possession delivered to the decee holder on 22<sup>nd</sup> of March, 1982. Sitaram Singh, one of the defendants filed First Appeal, which was dismissed on 08.08.2000 and further Letters Patent Appeal was dismissed on 30<sup>th</sup> of April, 2015. It is, thus, contended that the petitioner and his wife are owner in possession of the land over which the Respondent No. 6 is threatening to disturb. Therefore, the petitioner is entitled to a direction to protect his life and property. Reference is made to a Supreme Court judgment reported as P.R. Murlidharan and others Vs. Swami Dharmananda Theertha Padar and others, (2006) 4 SCC 501 and a Single Bench judgment of this Court reported as Prithwi Chand Gupta Vs. The State of Bihar & Os., 2008 (3) PLJR 442.


4. The petitioner has referred to a complaint made to District Magistrate on 10<sup>th</sup> of March, 2016 (Annexure-4).

5. The question as to whether the petitioner has been delivered possession consequent to purchase and the decree cannot be examined in a writ application. Such question is required to be examined by the Civil Court. Since the petitioner relies upon an order

passed by the Civil Court, therefore, the Petitioner has to seek his remedy either from the Civil Court or the executing court for redressal of the grievance pertaining to possession of the property which was subject matter of Civil Suit at an earlier stage.

6. The judgment of the Supreme Court in P.R. Murlidharan's case (supra) in fact holds that though the jurisdiction of the Writ Court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution of India but while doing so it could not collaterally go into that question, determination whereof would undoubtedly be beyond its domain. It was found that determination of the question arising in the writ petition was not the interpretation of the documents alone but it required adduction of oral evidence as well. It was also held that jurisdiction of the Civil Court is wide and plenary and in a case before the Supreme Court, the writ proceeding cannot be a substitute for a civil suit. Relevant extract from the said judgment reads as under:-

“12. It is one thing to say that in a given case a person may be held to be entitled to police protection, having regard to the threat perception, but it is another thing to say that he is entitled thereto for holding an office and discharging certain functions when his right to do so is open to question. A person could not approach the High Court for the purpose of determining such disputed questions of fact which were beyond the scope and purport of the jurisdiction of the High Court while



exercising writ jurisdiction as it also involved determination of disputed questions of fact. Respondent 1 who sought to claim a status was required to establish the same in a court of law in an appropriate proceeding. He for one reason or the other, failed to do so. The provisions of Order 9 Rule 9 of the Code of Civil Procedure stare on his face. He, therefore, could not have filed a writ petition for getting the selfsame issues determined in his favour which he could not do even by filing a suit. Indeed the jurisdiction of the writ court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution, but while doing so it could not collaterally go into that question, determination whereof would undoubtedly be beyond its domain. What was necessary for determination of the question arising in the writ petition was not the interpretation of the documents alone, but it required adduction of oral evidence as well. Such evidence was necessary for the purpose of explaining the true nature of the deed of trust,, as also the practice followed by this trust. In any event, the impleading applicant herein, as noticed hereinbefore, has raised a contention that he alone was ordained to hold the said office as per the bye-laws of the trust. The qualification of the first respondent to hold the office was also in question. In this view of the matter, we are of the opinion that such disputed questions could not have been gone into by the High Court in a writ proceeding.

13. Furthermore, the jurisdiction of the civil court is wide and plenary. In a case of this nature, a writ proceeding cannot be a substitute for a civil suit.”

7. The judgment of a Single Bench of this Court in Prithwi Chand Gupta's case (supra) shows that the auction sale has not been denied before the trial court concerned. In these circumstances, it was held that a person whose right to property has

been finally decided by a Court of law is entitled to lawful enjoyment of the same.

8. A perusal of the writ application would show that petitioner purchased the property during the pendency of the suit. Thus, purchase by him is subject to doctrine of *lis pendence*. Whether the petitioner has right and title or not or whether the vendor of the petitioner could hand over possession of the share of the property sold to the wife of the petitioner are the disputed questions of fact, which cannot be adjudicated upon in the present writ application.

9. Consequently, I do not find that any direction can be given to provide police protection to the petitioner. However, it shall be open to the petitioner to make a complaint to the police authorities as and when there is threat to his life and property which the police authorities are bound to examine in accordance with law.

10. The writ application is, thus, dismissed.

**(Hemant Gupta, J)**

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