

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.373 of 2014

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Ram Sharan Pandey & Ors

.... Appellant/s

Versus

Vikrama Sah, & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mrigendra Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 24-12-2014 **1.** Heard the learned counsel, Mr. Siya Ram Shahi, for the plaintiffs appellant under Order 41 Rule 11 of the Code of Civil Procedure.

2. This Misc. Appeal has been filed by the plaintiff appellants under Order 43 Rule 1 Clause (r)C.P.C. against the order dated 26.5.2014 passed by the learned Subordinate Judge Ist, Bettiah, West Champaran in Title suit No.405 of 2013 whereby the learned Court below rejected the application filed by the plaintiff appellants under Order 39 Rule 1 and 2 of the Code of Civil procedure.

3. It appears that the plaintiffs appellants filed the aforesaid Title Suit No.405 of 2013 praying therein for declaration that six registered sale deeds said to have been executed by the heirs of Aklu Rout in favour of the defendants is null, void and



meaningless. The plaintiff prayed for the aforesaid relief alleging that they are the purchaser of the suit property from the rightful owner. According to the plaintiff, the land was given to Bhola Mehtar by the then landlord. Bhola Mehtar died issueless and therefore, the possession of the land was taken by the landlord who settled the land in favour of the vendors of the plaintiff. However, the defendants have obtained the sale deeds from the heirs of Aklu Rout alleging that Aklu Rout was the son of Bhola Mehtar. The defendants filed contesting written statement alleging that in fact they are purchaser from the rightful owner. After death of Bhola Mehtar his son succeeded and thereafter on the death of Aklu Rout, the heirs of Aklu came in possession of the property and they have sold the property to the defendants and since then they are in possession of the property.

4. It appears that thereafter the plaintiff appellants filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying therein to restrain the defendants from interfering with the peaceful possession of the plaintiff. The defendants filed show cause to the injunction application. After hearing the parties, the learned Court below by the impugned order has rejected the application finding that the plaintiff has got no prima facie case and the balance of convenience is not in

favour of the plaintiff.

5. The learned counsel, Mr. Shahi for the appellant submitted that in fact Bhola Mehtar died issueless and the defendants claimed wrongly that he died leaving behind his son Aklu Rout. In support of their case, they have filed the voter list to show that Aklu Rout was the son of Pachkhouri Rout. The learned counsel further submitted that the plaintiff also filed death certificate and also pension paper of Aklu. According to the learned counsel, after purchase from the rightful owner, the plaintiff have been mutated and the mutation application filed by the defendants has already been rejected, therefore, if no injunction is granted restraining the defendants from interfering with the possession of the plaintiff, the plaintiff shall suffer serious loss and irreparable injury. Since the plaintiffs are the purchaser from real owner, the balance of convenience is also in favour of the appellant as well as prima facie case is in favour of the appellant.

6. Perused the order passed by the Court below.

7. At the time of hearing of this Misc. Appeal under Order 41 Rule 11 CPC, the copy of the plaint was produced before me. From perusal of the relief portion of the plaint, it appears that the

plaintiffs have only sought for declaration with respect to the sale deeds of the defendants. The plaintiff never claimed for declaration of their title nor they prayed for confirmation of their possession. It is admitted fact that there are six registered sale deeds in favour of the defendants. Now, therefore, in view of the above fact, if any order is made restraining the defendants, it will amount to giving a finding in favour of the plaintiff to the effect that the plaintiff are in possession of the property. In such circumstances, it will mean that the defendants are not in possession. These findings can be recorded on the basis of evidence and not at this stage. Therefore, the learned trial Court has rightly rejected application.

8. I, therefore, find no merit in this Misc. Appeal and accordingly, in my opinion, the learned Court below has rightly rejected the injunction application.

9. **In the result, this Misc. Appeal is dismissed.**

(Mungeshwar Sahoo, J)

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