

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.610 of 2013

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Satya Verma

.... Appellant/s

Versus

Smt. Meena Devi & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar Tiwary

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. Kishore Kumar Sinha,
for the appellant under Order 41 Rule 11 C.P.C.
- 2.** This Misc. Appeal has been filed by the appellant
against the order dated 18.5.2013 passed by the learned Sub Judge
Vth, Motihari in Title Suit No.660 of 2011 whereby the Court
below rejected the injunction application filed by the appellant.
- 3.** It appears that the plaintiff appellant filed the aforesaid
suit for declaration of title and for declaration that the sale deeds
said to have been executed by defendant respondent No.3 in
favour of defendant No.1 and 2 are void and not binding on the



plaintiff. According to the plaintiff, the original owner was Brij Bihari Sahay who had three sons, the first son died leaving behind his widow Asturan Devi who gifted the property to Anirudh Prasad, i.e., second son of Brij Bihari Sahay. The defendant respondent No.4, Rama Shanker Prasad, is the first son of Anirudh Prasad. Subsequently, a partition suit was filed by Ramashanker Prasad being Title Suit No.315 of 1980. In that suit, the gift deed executed by Asturan Devi in favour of Anirudh has been held to be valid gift deed but subsequently, it appears that the daughter of Bhuneshwar Prasad, i.e., son of Deodhari Prasad who was brother of Anirudh sold the property to the defendant No.1 and 2 just two days after the registered sale deed executed by Ramashanker Prasad in favour of the plaintiff.

4. The defendants appeared and filed contesting written statement alleging that no final decree was ever prepared in partition Suit No.315 of 1980, therefore, subsequently the parties compromised and then all the joint family properties were partitioned. In that partition, the suit property fell in the share of Bhuneshwar Prasad and accordingly the daughter of Bhuneshwar Prasad, namely, Malti Devi has sold the property to the defendant No.1 and 2 and since the purchase, the defendant No.1 and 2 are in possession of the property. After hearing the parties, the learned

Court below rejected the application for injunction filed by the appellant.

5. The learned counsel for the appellant submitted that in fact in the preliminary decree passed in partition suit No.315 of 1980, the gift deed executed by Asturan Devi in favour of Anirudh has been held to be valid deed, therefore, the suit property which came in possession of Anirudh Prasad on the basis of the gift deed could not have been partitioned subsequently and in fact there was no such partition and the property has been sold by son of Anirudh Prasad and since after purchase, the plaintiff is coming in possession over the suit property. The defendant's sale deed is without consideration and the same has been executed by Malti Devi without holding title and, therefore, no title passed to the defendant-respondent No.1 and 2. They started disputing the possession of the plaintiff on the basis of the sale deeds, therefore, the plaintiff was compelled to file the suit praying for declaration of title and for declaration that the sale deed is void and illegal and without consideration but the learned Court below without considering all these aspects of the matter has wrongly rejected the injunction application.

6. At the time of hearing of this Misc. Appeal, a copy of



the plaint was produced by learned counsel for the appellant. The plaintiff prayed for declaration of title with respect to the suit property and also prayed for injunction restraining the defendants from disputing the possession of the plaintiff. According to the defendant, they are in possession of the property. Now, therefore, there is controversy between the parties with regard to the question of possession. The plaintiff is claiming to be in possession of the property whereas the defendant respondents are claiming to be in possession of the property. In suit, both are the purchaser from family members. The question, therefore, to be decided ultimately in the suit is who is in possession of the property. Now, in the interlocutory matter, if injunction is granted, it will amount to declaration of possession of the plaintiff. Unless this finding is recorded that the plaintiff is in possession of the property, no injunction can be granted presuming that the plaintiff is in possession and also that the defendants are trying to dispossess the plaintiff.

7. All other points raised by the plaintiff are contested by the defendants in the suit and contesting written statement has been filed, therefore, the question as to the validity or otherwise of the decree passed in partition suit No.315 of 1980 or the subsequently family arrangement / partition between the members

of the family shall be gone into only at the final stage of the suit and not in this interlocutory matter. Therefore, I find no merit in this Misc. Appeal. The learned Court below has rightly rejected the injunction application. Thus, this Misc. Appeal is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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