

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.35 of 2012

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Sanjeev Kumar

.... Appellant/s

Versus

Md. Arif Khan & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nagadeo Choubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 27-01-2015

Heard the learned counsel for the appellant.

This Miscellaneous Appeal has been filed by the plaintiff-appellant against the order dated 12.12.2011 passed by the learned Sub Judge I, Sitamarhi in partition suit No.209 of 2009 whereby the court below rejected the injunction application filed by the plaintiff-appellant.

The plaintiff-appellant filed the aforesaid partition suit claiming 1/24th share in the suit property after setting aside two sale deeds dated 22.07.2009 executed by defendant no.2 in favour of defendant no.1. During the pendency of the suit, injunction application was filed on 20.03.2010 praying therein to restrain the purchaser from making any construction over Schedule III land.

The defendant appeared and filed show cause to the injunction application wherein he specifically stated that construction have already been completed and the property has

been enclosed by boundary wall.

The learned trial court after hearing both the parties, rejected the injunction application finding that plaintiff has got no prima facie case and the balance of convenience is not in favour of the appellant.

The learned counsel for the appellant submitted that if the respondents are not restrained from making further construction, the appellant shall suffer serious loss and irreparable injury. Because of the fact that there has been no partition between the co-sharers, the plaintiff has got title in each plots of the joint family property. Therefore, the prima facie case is in favour of the plaintiff and the balance of convenience is also in favour of the plaintiff.

From perusal of the impugned order, it appears that the court below has considered all these aspects of the matter which has been raised by the learned counsel for the appellant. The show cause has been annexed with this Miscellaneous Appeal. It appears that the defendant no.1, who is purchaser from the defendant no.2 in the year 2009 has stated that the property has been enclosed by construction of boundary wall and room and guard room have already been constructed in the suit property purchased by him.

It may be mentioned here that the sale deeds are dated 22.07.2009. Since then, there is no restraint order and in view of the fact that the construction has already been done by the respondent no.1, I do not find any illegality in the impugned order passed by the court below.

Accordingly, this Miscellaneous Appeal is dismissed at the admission stage itself.

(Mungeshwar Sahoo, J)

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