

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.135 of 2014

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Most. Dhruwtara Kuer & Ors.

.... Appellant/s

Versus

Bindhyachali Devi & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Santosh Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 7 20-01-2015 **1.** Heard the learned counsel, Mr. Dinbandhu Singh, for the appellant and the learned counsel, Mr. Binod Kumar Singh, for the respondent under Order 41 Rule 11 of the Code of Civil Procedure.
- 2.** This Misc. Appeal is directed against the order dated 3.12.2013 passed by the learned Adhoc District Judge IIIrd, Bhabhua in Title Appeal No.2 of 2011 / 69 of 2013 whereby the learned Court below rejected the injunction application filed by the appellant praying for restraining the respondents from transferring the suit property during the pendency of the appeal.
- 3.** The learned counsel for the appellant submitted that the plaintiff appellant filed the suit for partition claiming 2/3rd share. The Court below decreed partly, and therefore, the plaintiff filed



aforesaid Title Appeal before the lower appellate court. Since the defendant respondent were transferring the suit property during the pendency of the appeal, the injunction application was filed praying for restraining the defendants from transferring the property. Rejoinder application was filed by the respondents. The Court below has although recorded the finding that the appellant has got prima facie case but rejected the application on the ground that the transfer will be hit of the Principal of lispendence, therefore, the balance of convenience is not in favour of the appellant.

4. On the other hand, the learned counsel for the respondent submitted that the Court below has rightly passed the impugned order considering the fact that the transfer, if any, made by the respondent will be hit under Section 52 of the Transfer of Property Act. Since the respondent are transferring the land over which they are in possession, there is no question of irreparable loss to the appellant, and therefore, there is no question of balance of convenience in favour of the appellant arises.

5. Perused the record. Annexure-2 has been filed by the appellant showing that the respondents have already executed ten registered sale deeds in July, 2013. So far this fact is concerned,



there is no dispute. Now, therefore, it is clearly that during the pendency of the Title Appeal, the respondents are transferring the suit property. From perusal of the impugned order, it appears that the Court below recorded a clear finding that the plaintiff has got prima facie case. However, the Court below held that the transfer during the pendency of the litigation shall be hit of doctrine of lispendence and in that case, it is open for the plaintiff not to implead such person has already in the suit and, therefore, the balance of convenience is not in favour of the plaintiff.

6. The Hon'ble Supreme Court in the case of *Maharwal Khewaji Trust (Regd.) Vs. Baldev Dass, AIR 2005 SC 104* has held that **'unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings.'**

7. Admittedly, in the present case, there is no final decree and the plaintiff's suit has been decreed in part. In such circumstances, in view of the decision of the Hon'ble Supreme Court, the respondents cannot be permitted to transfer the land

blindly so as to frustrate the case of the appellant.

8. In view of the above facts and circumstances of the case, I find that the plaintiff appellant has got prima facie case and the balance of convenience is also in favour of the plaintiff appellant. If the property will be transferred, the plaintiff shall suffer serious loss and irreparable injury and he will be put to great hardship and also there shall be multiplicity of proceedings.

9. In the result, this Misc. Appeal is allowed, the impugned order is set aside and the injunction application filed by the plaintiff appellant is thus allowed. The defendant respondents are hereby restrained from transferring the suit property during the pendency of the appeal. If, however, any necessity will arise, they may apply for permission before the lower appellate Court and the lower appellate Court considering the facts and circumstances of the case shall consider the same according to law.

(Mungeshwar Sahoo, J)

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