

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.130 of 2012

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1. Shambhu Kumar Singh S/O Shri Sheo Nandan Singh Village and Post- Rulout,
P.S- Chausa, District- Madhepura.

.... Appellant/s

Versus

1. Smt. Manorama Devi W/O Late Ram Swarath Singh Village And P.O- Rulout,
P.S- Chausa, District- Madhepura. Plaintiff...Respondent
2. Shri Sheonandan Singh S/O Late Tapeshwari Singh Village and P.O- Fulout,
P.S- Chausa, District- Madhepura.
3. Shri Lallan Kumar Singh S/O Shri Sheo Nandan Singh Village And P.O- Fulout,
P.S- Chausa, District- Madhepura.
4. Shri Bipin Kumar Singh S/O Shri Sheo Nandan Singh Village And P.O- Fulout,
P.S- Chausa, District- Madhepura.
5. Shri Binay Kumar Singh S/O Shri Sheo Nandan Singh Village And P.O- Fulout,
P.S- Chausa, District- Madhepura.
6. Shri Ganesh Pd. Singh S/O Late Sarjug Pd. Singh @ Bhodhari Singh Village
And P.O- Fulout, P.S- Chausa, District- Madhepura.
7. Pramod Pd. Singh S/O Late Sarjug Pd. Singh @ Bhodhari Singh Village And
P.O- Fulout, P.S- Chausa, District- Madhepura.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manojeshwar Prasad Sinha,
Mr. Ratan Kumar Sinha,
Mr. Madhukar Pandey, Advocates.

For Respondent no.2 : Mr. Sushanta Kumar Das,
Mr. Amit Kumar Anand, Advocates.

For Respondent nos. 6 & 7 Mr. Hemant Kumar, Advocaes.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 06-05-2015

Heard the parties.

In the present appeal the appellant is claiming 1/4th share
in the property and also claiming that the husband of Manorma
Devi, namely, Ram Swarath Singh has executed the will in his
favour with respect to 1/4th share and for that a probate case has
been filed vide Probate Case No.23 of 2007.

In the present case allegation has been made by the appellant that plaintiff respondent no.1 executed 13 sale deeds in one day and she wants to alienate all the valuable property which is subject matter of the partition suit vide Partition Suit No.83 of 2008.

Learned counsel for the respondent submits that unless the will is probated, the appellant can not claim any right over the property, and admittedly the plaintiff-respondent is the wife of the deceased. According to the Hindu Succession Act she represents $\frac{1}{4}^{\text{th}}$ share of her husband and so much so other co-sharers are also selling the property. Other respondent who is also share holder has submitted that in certain occasion he has also sold some property and in the name of probate the appellant wants to grab the entire property whereas he has only $\frac{1}{4}^{\text{th}}$ share in the entire property.

In the present case, in terms of Section 213 of the Hindu Succession Act unless, the will is probated the executer or legatee will not have any right over the will property. He has relied on the two judgments: (i) Suresh Singh and Another V. Dr. raja Ram Singh and others, reported in 1992(2) PLJR 129 and (ii) Dharam Nath Ojha & others V. Raghunath Ojha, reported in 2001(2) PLJR 268, paragraph 9.

For granting an injunction three things are necessary, prima-facie case, balance of convenience and irreparable loss. So far probate case is concerned in terms of Section 213 of the Act it is very difficult to arrive to a conclusion that the appellant could make out a prima facie case also does not have balance of convenience as the nature of the property is agricultural land. If the appellant would win in the probate case certainly provisions of lis pendency will apply. But property in question should not evaporated by the process of sale by all the parties. The parties to the appeal have arrived to consensus they would not engage themselves in the sale of left out property.

In such view of the matter this appeal is disposed of with agreement recorded hereinabove. The court below is directed to dispose of the title suit within a period of six months from the date of receipt/production of a copy of this order subject to the condition that the party would co-operate in the proceeding of the court below.

Vinay/-

(Shivaji Pandey, J)

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