

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.519 of 2009

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Purnima Dwivedi @ Purnima Devi

.... Appellant/s

Versus

Pandit Jagdish Dwivedi & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ambuj Nayan Chaubey
Mr. Siddharth Harsh

For the Respondent/s : Mr.
Mr. Mrigendra Kumar

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

7 27-01-2015 Heard learned senior counsel Mr. K.N.Chaubey on behalf of the appellants, learned counsel Mr. Gajanan Arun on behalf of respondent no.2 and learned counsel Mr. Mrigendra Kumar on behalf of respondent no.6 under Order 41 Rule 11 of the Code of Civil Procedure.

2. Notices were issued in admission matter to the respondents. After notice the respondents aforesaid have appeared.

3. This miscellaneous appeal has been filed by the plaintiff-appellant against the order dated 22.08.2009 passed by the learned Subordinate Judge-I, Aurangabad in Title Suit No.227 of 2008 whereby the learned court below disposed of the injunction application filed by the plaintiff-appellant directing the plaintiff to receive rent from five shop rooms and restraining the

respondent no.2 from transferring the said five shop rooms only.

4. It appears that the aforesaid suit was filed by the plaintiff-appellant for setting aside the sale deeds executed by respondent no.2 in favour of transferees transferring four shop rooms out of fourteen shop rooms. According to the plaintiff's case, in family arrangement the lands were allotted in favour of the appellant wherein the appellant constructed fourteen shop rooms. However, respondent no.2 without any title transferred the property to the purchasers by registered sale deeds in the year 2006 and 2008.

5. The learned counsel for the appellant submitted that the plaintiff filed the injunction application praying for restraining the defendant-respondent no.2 from alienating the lands and shop rooms, which are allotted in favour of the plaintiff-appellant and constructions have been made by her. In the said injunction application show-cause notice was issued and the respondent no.2 appeared and filed show-cause to the effect that the appellant shall collect the rent from five shop rooms and he will not transfer the said shop rooms. So far rest five shop rooms are concerned, the respondent no.2 shall collect the rent and he will be at liberty to realise the rents. The appellant prayed for time for filing reply to the show-cause but the learned court below by the impugned order

disposed of the injunction application in terms of the show-cause filed by respondent no.2.

6. According to the learned counsel for the appellant, if during the pendency of the suit respondent no.2 is allowed to transfer the shop rooms, the appellant who is deserted old lady will be put to great hardship and she will suffer serious loss and irreparable injury. The learned court below without considering the three ingredients for grant of injunction has disposed of the injunction application.

7. On the other hand, the learned counsel Mr. Gajanan Arun appearing on behalf of respondent no.2 submitted that respondent no.2 undertakes that he will not transfer the remaining ten shop rooms and also shall allow the appellant to collect the rent from ten shop rooms till the suit is disposed of. So far transferee, respondent no.6 is concerned, the learned counsel submitted that he is bonafide purchaser and the sale deed in his favour is subject matter of the suit, which will be governed by the result of the suit.

8. Perused the order passed by the court below. It appears that the injunction application was filed for restraining the defendant-respondent no.2 from transferring the remaining ten shop rooms on the allegation that four shop rooms have already



been transferred by respondent no.2 to the purchasers during the subsistence of the injunction order passed by the court in Partition Suit No.257 of 2006. The court below on the undertakings given by respondent no.2 has passed the impugned order to the effect that the appellant shall collect the rent from five shop rooms. The respondent no.2 was restrained from transferring the said five shop rooms. No order was passed with respect to other five shop rooms. However, the learned counsel appearing on behalf of respondent no.2 submitted that the appellant is his wife. The respondent no.2 is getting pension, therefore, here before this High Court he undertakes that respondent no.2 shall not transfer the remaining ten shop rooms and shall allow the appellant to collect the rent from ten shop rooms.

9. In view of the aforesaid undertakings given by the husband-respondent no.2 in favour of wife-appellant it appears that now good relation has crept up between the parties. Therefore, in view of the undertakings given by the husband, the husband-respondent no.2 is restrained from transferring ten shop rooms and is directed to allow the appellant to collect the rents from the aforesaid shops only. The impugned order passed by the court below is, thus, modified to this extent only. Accordingly, this miscellaneous appeal is disposed of.

10. In view of the aforesaid decision in the miscellaneous appeal on merit itself and the undertakings given by the husband-respondent no.2, the wife-appellant is not pressing Interlocutory Application No.7475 of 2014, Interlocutory Application No.7477 of 2014 and Interlocutory Application No.7507 of 2014. Accordingly, the aforesaid interlocutory applications are dismissed as not pressed.

Harish/-

(Mungeshwar Sahoo, J)

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