

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.295 of 2013

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1. Dharmendra Prasad Tiwari @ Dharmandra Prasad Tiwary Son Of Devendra Prasad Tiwary Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran

.... Appellant/s

Versus

1. Baruchi Mishra Son Of Late Shankarnarayan Mishra Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran
2. Navnit Mishra @ Chota Mishra Son Of Late Shankarnarayan Mishra Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran
3. Jaiwardhan Mishra @ Rimjhim Mishra Son Of Late Shankarnarayan Mishra Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran
4. Girishwer Mishra Son Of Late Manishwar Mishra Resident Of Mohalla Daudpur, P.O. Daudpur, P.S. Cant, District Gorakhpur, Presently Hod, Psychology, Delhi University, Delhi
5. Sridhar Mishra Son Of Late Mahipat Mishra Resident Of Mohalla 57 Mishra Bhawan, Daudpur, P.O. Daudpur, P.S. Cant District Gorakhpur, Uttar Pradesh
6. Maheshwar Mishra Son Of Late Prasiddhnarayan Mishra Resident Of Mohalla 57 Mishra Bhawan, Daudpur, P.O. Daudpur, P.S. Cant District Gorakhpur, Uttar Pradesh, Presently Residing Ar M. 3 Badsahbagh Varanasi, P.S. Sagra, District Varanasi, Uttar Pradesh
7. Yageshwar Mishra Son Of Late Prasiddhnarayan Mishra Resident Of Mohalla 57 Mishra Bhawan, Daudpur, P.O. Daudpur, P.S. Cant District Gorakhpur, Uttar Pradesh, Presently Residing Ar M. 3 Badsahbagh Varanasi, P.S. Sagra, District Varanasi, Uttar Pradesh
8. Dayanidhi Mishra Son Of Late Prasiddhnarayan Mishra Resident Of Mohalla 57 Mishra Bhawan, Daudpur, P.O. Daudpur, P.S. Cant District Gorakhpur, Uttar Pradesh, Presently Residing Ar M. 3 Badsahbagh Varanasi, P.S. Sagra, District Varanasi, Uttar Pradesh
9. Bhoj Sah Son Of Late Baidyanath Sah Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran
10. Khobhari Choudhary Son Of Jamuna Choudhary Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran
11. Badri Sahni Son Of Shiv Nath Sahni Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran
12. Shivnath Sahni Son Of Ramroop Sahni Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran
13. Arvind Upadhyay Son Of Sugandhi Upadhyay Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran
14. Paras Mishra Son Of Late Shyamsundar Mishra Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran
15. Suresh Pandey Son Of Late Chetan Pandey Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran
16. Rudal Choudhary Son Of Kishun Choudhary Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran
17. Sahid Baitha Son Of Rajdin Baitha Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran
18. Banshi Yadav Son Of Jangi Yadav Resident Of Village + P.O. Manjharia, P.S.

Bhairoganj, District West Champaran

19. Gwal Yadav Son Of Banshi Yadav Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran

20. Satan Pandey Son Of Raj Kumar Pandey Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran

21. Vinay Prasad Mishra Son Of Late Adhya Prasad Mishra @ Bhim Mishra Resident Of Village + P.O. Naraipur, P.S. Bagaha, District West Champaran

22. Smt. Manjula Devi Wife Of Sri Devendra Shukla, Daughter Of Late Vidyaniswas Mishra Resident Of Village + P.O. Manjharia, P.S. Bhairoganj, District West Champaran, Presently Residing At House No. 34, Sector 14, Sanskrit Nagar, Rohini East, New Delhi

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ganpati Trivedi, Advocate.

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 04-08-2015

Heard learned counsel for the appellant.

In the present appeal the appellant is challenging the order dated 23.3.2013 passed by the Sub-ordinate Judge II, Bagaha, West Champaran in Title Suit No.121 of 2011 by which the court below has refused to pass an injunction order in favour of the appellant.

From the record it appears that appellant is purchaser of the disputed land through registered document, other side made claim to have purchased the land by oral transaction followed by possession. The court below while deciding the injunction matter has recorded that in a proceeding under Section 144 of the Code of Criminal Procedure vide 677 of 2011 though the criminal court has



passed the order against other side but report shows the possession of the respondent so much so also in the year 1976 in 144 proceeding vide Case No. 452M of 1976 possession of the other side was found. In such view of the matter the court has arrived to a conclusion that no prima facie case is made out in favour of the appellant. The court below refused to pass order of injunction in favour of appellant considering materials available on record.

This Court does not see that the court has wrongly exercised his discretion in refusing to grant injunction. Accordingly order of the court below is affirmed. However, the Hon'ble Supreme Court in the case of Maharwal Khewaji trust (Regd), Faridkot V. Baldev Dass, reported in (2004)8 SCC488 has taken a view that during pendency of the proceeding the property of the dispute should remain intact so that at the end of the trial the parties will be able to get usufruct of the disputed property. It will be relevant to quote paragraph 10 of the aforesaid judgment:

“10.Be that as it may, Mr. Sachar is right in contending 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. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be the conditions on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored."

In such view of the matter no party will create encumbrance over the disputed property during pendency of trial subject to permission of the trial court.

Accordingly this appeal is dismissed.

(Shivaji Pandey, J)

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