

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.644 of 2013

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1. Mani Mohan Sinha S/O Late Jai Chand Sinha Resident Of Mohalla Sujapur, Narayan Singh Lane, P.S. Nathnagar, District Bhagalpur.

.... Appellant/s

Versus

1. Gopal Chandra Sinha S/O Late Jai Chand Sinha Resident Of Mohalla Sujapur, Narayan Singh Lane, P.S. Nathnagar, District Bhagalpur. At Present Resident Of Mohalla Purandaha, Shishir Kumar Road, V.I.P. Chowk, Uma Niwas Baijnath Dham, P.O. And P.S. Deoghar, District Deoghar (Jharkhand).

2. Smt. Basundhara Devi W/O Gopal Krishna Mitra D/O Late Jai Chand Sinha Resident Of Mohalla Mundichak, P.S. Tilkamanjhi, District Bhagalpur.

3. Most. Meera Devi W/O Late Prasant Kumar Ghosh D/O Late Jai Chand Sinha Resident Of Mohalla Sikandarpur, P.S. Mojahidpur, District Bhagalpur.

4. Manu Dutta D/O Late Sita Ram Sinha Resident Of Mohalla Sujapur, P.S. Nathnagar, District Bhagalpur.

5. Chhaya Ghosh D/O Late Sita Ram Sinha Resident Of Mohalla Sujapur, P.S. Nathnagar, District Bhagalpur.

6. Shail Ghosh D/O Late Sita Ram Sinha Resident Of Mohalla Sujapur, P.S. Nathnagar, District Bhagalpur.

7. Smt. Sarita Devi W/O Sri Dilip Kumar Sah Resident Of Village And P.O. Teliya, P.S. And District Banka At Present Mohalla Sujapur In The House Of Sri Bijoy Kumar Yadav, P.S. Nathnagar, District Bhagalpur.

8. Mostt. Chinta Bala Sinha W/O Late Sita Ram Sinha Resident Of Mohalla Sujapur, Narayan Singh Lane, P.S. Nathnagar, District Bhagalpur.

9. Sapan Kumar Sinha S/O Late Sitaram Sinha Resident Of Mohalla Sujapur, Narayan Singh Lane, P.S. Nathnagar, District Bhagalpur.

10. Shekhar Kumar Sinha S/O Late Sitaram Sinha Resident Of Mohalla Sujapur, Narayan Singh Lane, P.S. Nathnagar, District Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Samir Kumar Sinha, Adv.

For the Respondent/s : Mr. S.C.Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

4 15-09-2015

Heard counsel for the appellant and the respondents.

In this case, appellant is challenging the order dated 18th June 2013 passed in T.S.No. 820 of 2012 whereby and whereunder the court below has refused to grant injunction.



As per case of the plaintiff, they are governed by Dayabhag School of Hindu Law. The common ancestor was Jai Chand Sinha who died in the year 1956 leaving behind his widow Bina Devi, three sons, namely, Sita Ram Sinha, Mani Mohan Sinha and Gopal Chandra Sinha and two daughters, namely, Basundhara Devi and Meera Devi. Bina Devi died in the year 1988 leaving behind aforesaid three sons and two daughters. Later on Sita Ram Sinha died in the year 2009 leaving behind his wife Most. Chinta Bala Sinha and two sons, namely, Sapan Kumar Sinha and Shekhar Kumar Sinha and three daughters, namely Manu Dutta, Chhaya Ghosh and Shail Ghosh. Wife and two sons of late Sitaram Sinha and his brother Mani Mohan Sinha are plaintiffs in the present suit whereas Gopal Chandra Sinha is defendant 1st party, Basundhara and Meera are defendant s 2nd party and daughters of late Sita Ram Sinha are defendant s 3rd party in the suit.

The present matter relates to ancestral house property. It appears that there was a partition amongst the family members and accordingly, the property was divided. Gopal Chandra Sinha was intending to sell out his share in the household property and before execution of the sale-deed he gave offer to the plaintiffs to purchase the suit property for consideration of Rs.10,00,000/-. When positive response was not

received, the property has been alienated to the purchaser which caused heart burning. Records of Revenue Appeal No.14 of 1979 shows the partition of the family but under the Partition Act, in the event alienation of joint residential house preference has to be given to the person who is co-parcener or member of the joint family. Only on refusal, stranger can be inducted in the house.

Counsel for the appellant submits that he had given offer to Mani Mohan Sinha only and not to other persons interested in the house.

Counsel for the appellant submits that new purchasers are constructing building in such a manner to block the entrance of the house which will cause unnecessary harassment and impediment in using the house in question.

For the ends of justice, respondents are prohibited to change the nature of the structure and will not block passage putting any hurdle in ingress and egress. Right and title of the parties will be decided by the competent court. The question of offer will be gone into by the trial court. This Court is not giving any opinion on the merit of the case.

Accordingly, this appeal is disposed of.

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(Shivaji Pandey, J)