

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16945 of 2015

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Koeri Hitkarani Panchit Hat Samitee & Ors.

.... Petitioner/s

Versus

Anil Kumar Mehta & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 17-12-2015

Heard the learned senior counsel, Mr. S.S.Dvivedi on behalf of the plaintiffs-petitioners.

This application under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners against the order dated 31.07.2015 passed by 1st Additional District Judge, Patna City in Misc. Appeal No.22 of 2013 whereby the appellate Court set aside the order of the trial court dated 24.06.2013 passed by 1st Subordinate Judge, Patna City in Title Suit No.254 of 2012 whereby the Court below had allowed the application under Order XL Rule 1 of the C.P.C. and appointed a receiver.

The plaintiffs-petitioners filed the Title Suit No.254 of 2012 praying for the relief that the election held by the defendants 1st set(defendant Nos.1 to 4) on 27.03.2012 and the election held by defendants 2nd set(defendant Nos.5 and 6) on 28.05.2012 be declared to be illegal, inoperative and against the rules,



unconstitutional and without jurisdiction. The plaintiffs further claimed the relief that it be declared that the defendant No.7 is the elected President of the Koeri Hitkarni Panchit Hat Sameeti and a mandatory injunction be issued to the defendant No.8, the convenor to conduct election of the remaining office bearers of the Sameeti from the members as per bye-laws of the Sameeti within a reasonable period. Interim injunction was also prayed for restraining from interfering in peaceful and smooth running of the office by the plaintiffs.

In the suit, an application was filed by the plaintiffs for appointment of a receiver to run the office of the Sameeti. The trial Court allowed the said application and appointed a receiver. The defendants filed Misc. Appeal being Misc. Appeal No.22 of 2013 and by the impugned judgment dated 31.07.2015, the appellate Court reversed the order passed by the trial Court.

From perusal of the appellate Court judgment, it appears that the Court below considered various decisions of the Supreme Court as well as this Court wherein the principles have been laid down with respect to consideration of an application under Order XL Rule 1 C.P.C. Admittedly, the defendants are office bearers and are in possession of the office and are running the office. The relief claimed by the plaintiffs for appointment of receiver if

allowed, as has been allowed by the trial Court, it will amount to dispossession of the defendants who are running the office. This relief can only be given to the plaintiffs if the election will be held to be illegal as this is the main relief claimed by the plaintiff in the suit. Now, the lower appellate Court has considered this aspect of the matter and, therefore, has reversed the order passed by the trial Court.

The learned senior counsel, Mr. S.S.Dvivedi for the plaintiffs submitted that in every three years, election is held for the office bearers and in this case, the election was held in the year 2012 which has already expired. Therefore, further election is to be held by the Sameeti.

So far this submission is concerned, if it is the fact then the same shall be considered by the trial Court but in exercise of supervisory jurisdiction, on this ground, the suit cannot be decreed at this stage. Unless the suit is decreed, the relief which is claimed by the plaintiff in the suit itself cannot be granted in the garb of appointment of a receiver.

In view of the above, I find no merit in this writ application and, therefore, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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