

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.501 of 2014

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1. Mukesh Thakur S/o Late Beni Thakur
2. Rajesh Thakur S/o Late Beni Thakur
3. Most. Anushuiya Devi w/o Late Beni Thakur All residents of Bhagwanpur Chakshekhu, Nagar Panchayat Dalsinghsarai, Ward No. 06, P.O., P.S. AND Sub-Registry Dalsinghsarai, District- Samastipur

.... Appellant/s

Versus

1. Vinod Thakur S/o Late Bhupnath Thakur resident of Bhagwanpur Chakshekhu, Nagar Panchayat Dalsinghsarai, Ward No. 06, P.O., P.S. - Registry Dalsinghsarai, District- Samastipur
2. Savitri Devi W/o Sri Kapildeo Thakur D/o Late Shiv Prasad Thakur
3. Abhishek Kumar s/o Sri Baidyanath Thakur, Both residents of Bhagwanpur Chakshekhu, Nagar Panchayat Dalsinghsarai, Ward No. 06, P.O., P.S. -Registry Dalsinghsarai, District- Samastipur
4. Nirmala Devi w/o Sri Ramchandra Thakur D/o Late Shiv Prasad Thakur resident of Bhagwanpur Chakshekhu, Nagar Panchayat Dalsinghsarai, Ward No. 06, P.O., P.S. -Registry Dalsinghsarai, District- Samastipur
5. Gayatri Devi, W/o Bhushan Thakur resident of Bhagwanpur Chakshekhu, Nagar Panchayat Dalsinghsarai, Ward No. 06, P.O., P.S. -Registry Dalsinghsarai, District- Samastipur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. J.K.Verma & Mr.Anjani Kumar,Adv.
For the Respondent/s : Mr. Nand Kishore Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

5 15-10-2015 Heard counsel for the appellants and the respondents.

In the present case, the appellants are challenging the order dated 12th June 2014 passed by the Sub-ordinate Judge-I, Dalsinghsarai in Partition Suit No. 37 of 2014 whereby and whereunder he has granted injunction against the appellants with regard to construction over the suit land.

This Court vide order date d 6th October 2015 with

respect to I.A.No. 7718/2015 has passed the order the appellants will be at liberty to proceed with the construction over the land, save and except 2 dhurs of land as has been claimed by the respondents. Though the counsel for the appellants has taken several points submitting that the suit was for simple partition. No relief has been sought with regard to declaration of title and removal of encroachment.

In such view of the matter, the relief of injunction that has been given by the court below is not sustainable so much so that the suit itself is not maintainable in law.

It appears it is an inter-se dispute between the transferees of three sisters and all of them have alienated the property to plaintiff and defendants. Parties are claiming respective part of the purchased land that led to inter se dispute, compelled the parties to approach this Court. As agreed by the parties, appellants would not make any construction over two dhurs of land which has been mentioned in the order dated 6th October 2015 and other side has also agreed that it requires urgent disposal so that the dispute between the purchasers should come to an end.

In such view of the matter, the order dated 6th October 2015 is confirmed and the order dated 4th September

2015 passed in T.S.No. 37 of 2014 is modified to the aforesaid extent. Both the sides have given undertaking that they will co-operate in early disposal of the proceeding of the court below. In such view of the matter, the court below is directed to complete the trial within six months.

Counsel for the respondents want to withdraw I.A.No. 8269 of 2015. Accordingly, the prayer is allowed. I.A. is dismissed as withdrawn with liberty, of so advised, may take legal recourse in accordance with law.

Accordingly, this appeal is disposed of.

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(Shivaji Pandey, J)