

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.290 of 2014

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1. Nand Kishore Sharma
 2. Ashok Kumar Sharma
 3. Mukti Nath Sharma
 4. Arbind Kumar Sharma @ Shambhu Nath Sharma
All sons of Late Ram Janam Sharma, residents of village-Pyarepur, PS-Ishuapur, PO-Salempur, District-Saran.

.... Appellant/s

Versus

1. Vishnu Bhagwan Sharma Son of Late Baliram Sharma, resident of village - Pyarepur, PS-Ishuapur, PO-Salempur, District-Saran.

Defendant/Respondent 1st set

2. Nageshwar Sharma
3. Raj Kishore Sharma
4. Jay Kishore Sharma
All are son of Late Baliram Sharma, resident of village- Pyarepur, PS-Ishuapur, PO-Salempur, District-Saran.

Defendant/Respondent 2nd set

5. Lakhpatri Devi wife of Late Dinanath Sharma, resident of village-Pyarepur, PS-Ishuapur, PO-Salempur, District-Saran.
6. Kalawati Devi daughter of Late Dinanath Sharma and wife of Chandrama Sharma, resident of village –Semari, PS-Mashrakh, PO-Mashrakh, District-Saran.
7. Sushila Devi daughter of Late Dinanath Sharma and wife of Satrohan Sharma, resident of village –Maricha, PS-Baniyapur, District-Saran.
8. Dhup Nath Sharma
9. Jay Prakash Sharma
10. Surendra Sharma son of Late Dinanath Sharma, resident of village-Pyarepur, PS- Ishuapur, PO-Salempur, District-Saran.

Defendant/Respondent 3rd set

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nagendra Rai
Mr. Navin Nikunj, Adv.
Mr. Deepak Kumar, Adv.
Mr. Rananjay Kumar, Adv.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

5 24-11-2015 Heard learned counsel for the appellants and learned
counsel for the respondents.

In the present case, appellants are challenging the order dated 13th March 2014 passed in Partition Suit No. 276 of 2013 whereby and whereunder the court below has refused to grant the injunction in favour of the appellants.

The parties are agnates, filed partition suit claiming that there was no partition by metes and bounds and in the partition suit, the plaintiff has filed an injunction petition, making a prayer for restraining the defendant-respondent to construct the building over the disputed land as well as to restrain him to alienate the joint family property.

The court below has arrived to a finding that the defendant-respondent is constructing the building in his own share which does not cause any prejudice or irreparable injury to the plaintiff, but the court below has not taken into consideration the issue with regard to alienation of property by the defendant-respondent.

The counsel for the respondents submits that so far the construction over the property is concerned, the respondent is constructing the building within his own share, not over the share of the plaintiff. He also submits that the Court may pass an order whoever in need of sale of property, they will take proper permission from the court below.

Having considered the rival contention of the parties, the counsel for the plaintiff does not dispute that the construction is being made by defendant within the share of the **defendant**. Any construction will be subject to the result of the suit. However, the parties will not engage alienating itself in the joint family property during the pendency of suit and whoever in need of sale of property, they will approach the court below and the court below after consideration of facts and circumstances, will grant the liberty to the parties for alienation of the proportion of the land.

With the above observation/ direction this appeal is disposed of.

(Shivaji Pandey, J)

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