

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.516 of 2012

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1. Sri Anup Singh S/O Late Judagi Singh Resident Of Village- Hanuman Chak, Police Station- Didarganj, Post Office- Kachi Dargah, District- Patna.
 2. Shri Parmeshwar Singh S/O Late Judagi Singh Resident Of Village- Hanuman Chak, Police Station- Didarganj, Post Office- Kachi Dargah, District- Patna.
 3. Shri Ramashish Singh S/O Late Judagi Singh Resident Of Village- Hanuman Chak, Police Station- Didarganj, Post Office- Kachi Dargah, District- Patna.
 4. Shri Umendra Kumar @ Upendra Kumar S/O Late Ram Swarup Singh Resident Of Village- Hanuman Chak, Police Station- Didarganj, Post Office- Kachi Dargah, District- Patna.

.... Appellant/s

Versus

1. Shri Lakhan Kumar @ Ashok Kumar S/O Late Prabhu Dayal Singh Resident Of Village- Alampur (Sahalpur) Post Office- Kachchi Dargah, Police Station- Didarganj, District- Patna.
2. Shri Nand Kumar Singh S/O Late Prabhu Dayal Singh Resident Of Village- Alampur (Sahalpur) Post Office- Kachchi Dargah, Police Station- Didarganj, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rakesh Chandra,
Mr. R. K. Dubey, Advocates.

For the Respondent/s : Mr. Ajay Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 03-08-2015

Order dated 28.7.2015 is modified to the extent that it should be read as 29.7.2015.

2. Heard the parties.

3. In the present appeal the appellants are challenging the order dated 25.6.2012 passed by the Sub Judge-V, Patna City in Title Suit No.140 of 2010 by which the court below has refused to pass the order of injunction in favour of the appellants and rejected the same as the appellants could not satisfy the triple conditions for granting the injunction.

4. The short fact of the case is that the appellants have filed a title suit where relief has been sought to declare right and title of the plaintiff and none title of the defendants over the suit property. It appears from the plaint that claim has been made by the appellants that one Judagi Singh in the year 1955 purchased 3.85 acres of land with trees from one Sheikh Md. Idris, son of late Shahid Hussain alias Baddu Mian of Village Sabalpur Tola Fateh Jampur, P.S. Malsalami, Patna City appertaining to Tauzi No.206, Thana No.044, Khata No.732, Kheshra No. 962, the total area of the plot was 3.85 acres and accordingly ancestor of the plaintiffs came in possession of the plot. It has further been stated that at the time of vesting of Jamindari, the Jamindar submitted return showing the name of Judai Singh in the return. Register II was opened in his name and he was continuing in possession of the same till his death and thereafter the plaintiffs came in possession of the land. It has further been averred that out of 3.85 acres of land 0.77 acres of land was sold by the plaintiffs in the year 1957 and accordingly the purchaser came in possession of the purchased plot i.e. part of plot no.962, Khata No.732. The said purchaser in the year 1983 sold the entire purchased land to the plaintiffs and plaintiffs came in possession of the entire area of plot no.962, Khata no.732. In the year 1965 one Dhunmun Rajak, son of Jagu Rajak filed a title suit vide T.S. No.129 of 1965 for partition and his case was that he had

purchased 1.54 acres of land from the heirs of Talfut Hussain and Soghara as per their share in plot no.962, Khata No.732. It was mentioned that Didar Ali had two sons, namely, Talfut Hussain and Shahid Hussain alias Sheikh Baddu and one daughter Soghara. When Dhunmun Rajak did know actual state of affair, he did not take any step, ultimately the case was dismissed for default.

5. Talfut Hussain and daughter Soghra died issueless and another son Shahid Hussain died leaving behind only one heir, namely, Sheikh Md. Indrish who sold the entire area of plot no.962, Khata No.732 to Judagi Singh but inadvertently an area of 2.31 acres has been mentioned in the sale deed dated 23.5.1955 but the land is in their possession. It has further been averred that the defendants-respondents took the D.C.L.R. in their collusion while plaintiffs were behind the bar in a false criminal case got the land demarcated behind the back of the plaintiffs. The order of the DCLR is illegal and without jurisdiction. The defendants have got neither right, title and possession over this suit land. Defendants tried to erect pillars over the suit plot but their attempt was foiled. The defendants never came in possession of any portion of the suit plot no.962 even for a moment.

6. Defendants-respondents appeared and took the plea that Hari Mistry and Devi Lal, Prabhu Dayal executed a deed of



Rehan (mortgage) on 31.10.1943 in favour of Babu Rameshwar Singh in respect of plot no.962, Khasra No.952, Khata No.732, Thana no.44, Tauzi No.206 two Bighas, nine Kathas, twelve Dhooors out of six Bighas nine Kathas and put the mortgagee in possession of the land. As the mortgagor failed to pay the loan amount Title Suit No.27/21 of 1949/50 was filed by the mortgagee before the Court of Sub-Judge Ist, Patna against the mortgagors Hari Mistry and others and ultimately the suit was decreed on 1.12.1951 and decree was sealed and signed on 29.4.1952 and the decree holders put the decree in execution and four annas, two dams five kauris and fourteen bauris out of the sixteen annas raiyat khash land having total area of 3.85 acres were put to auction sale in Execution Case No.39 of 1943 of 1952/1953. The aforesaid four annas and odd shares being equal to 1.32 acres out of 16 annas of Khesra No.962 having a total area of 3.85 acres was auction sold in 1953 and was purchased by the decree holders and sale certificate was granted to the decree holders on 9.11.1953, thereafter in pursuance of the sale certificate possession was delivered to the auction purchasers. In this manner the defendants-respondents has taken a plea that they are in possession of the land and after long lapse of time the plea for wrong entry in the sale deed is incorrect rather land is in their possession not entitled to injunction.

7. Learned counsel for the respondents has produced the



original record which shows that the land in question was put to auction and the same was purchased. Objection has been raised by the appellants, the certificate shows that the land was auction sold was appertaining to Khata no.722 whereas disputed land is of Khata no. 732 but original record shows correction of khata number, as has been made 732 itself prima facie erodes the authenticity of claim of appellant. This Court is not giving any final opinion on this matter but is confined to injunction matter alone.

8. It appears from paragraph 10 of the plaint where plaintiff himself stated that DCLR, Patna City in collusion with the respondent got the land demarcated behind the back of the plaintiff. In such view of the matter itself has weaken the case of appellant on the issue of possession. It is an admitted fact, the sale deed has not inscribed the area of purchased land 3.85 acres rather area mentioned is 2.31 acres of land basically claiming the relief of rectification of the sale deed as the same shows lesser amount of the area in respect to 3.85 acres.

9. For granting the relief of injunction it requires that plaintiff has to prove triple conditions the prima facie case, balance of convenience and irreparable loss. In case, any of ingredients is absent the court will not exercise its discretion. The basis of claim, the sale deed itself shows lesser amount of the land and the documents of the other side shows, the land in

dispute was auction sold and the same was purchased by the defendants and accordingly possession was given, in that circumstances it is difficult for this Court to arrive to a conclusion that the appellants have made out a prima facie case in his favour. If the appellants fails to prove primary ingredients of prima facie case in that circumstances other ingredients lost its significance.

10. Khatiyani has been shown that the original land holder was Didar Ali but in the right hand side the name of Daroga, son of Laxuman has been mentioned.

11. Of course this Court is not giving any finding on the right and title of the party over property but this tentative finding will not be taken into consideration by the court below while deciding the suit on merit.

12. Learned counsel for the appellants has relied on the judgment of the Hon'ble Supreme Court in the case of Maharwal Khewaji Trust (Regd.), Faridkot V. Baldev Dass, reported in (2004) 8 SCC 488 where the Court has said 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. 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.”

13. But here question is that sale deed was executed much earlier, there the amount of land has been shown to the lower side. Appellants are claiming to be the owner of entire land and after long laps of time they basically filed the case asking the relief of correction in recital of sale deed and claiming possession. In view of document of auction sale makes the case

of respondent comparatively in higher pedestal, in such situation, keeping respondents out from use of property will not be proper exercise of discretion by this Court when the court has already arrived to a conclusion that appellant failed to make out prima facie case in his favour. In such view of the matter, this Court does not find any error in the impugned order.

14. Accordingly this appeal is dismissed.

15. However, neither party will alienate the property to the third party. The court below is directed to dispose of the suit within a period of one year subject to the conditions of co-operation extended by the parties.

(Shivaji Pandey, J)

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