

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.715 of 2008**

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Gaurav Singh & Anr.

.... .... Appellant/s

Versus

Mahipal Singh & Anr.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Ashok Kumar  
Mr. Satish Kumar  
Mr. Md. Waliur Rahman

For the Respondent/s : Mr. Vinod Kumar Seth

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR**  
**SAHOO**  
**ORAL ORDER**

4      27-01-2015                      Heard the learned counsel, Mr. Waliur Rahman on  
behalf of the appellants.

It appears that notices were issued in admission matter to the respondents. Although, the respondents have already appeared through the learned counsels whose name is also printed in the daily cause list but nobody appeared on behalf of the respondents when this Miscellaneous Appeal has been heard under Order 41 Rule 11 C.P.C.

The learned counsel for the appellants submitted that there are two suits between the same parties. One filed by Girija Devi for partition being title suit No.261 of 2007 and the other suit filed by the present appellants being title suit No.295 of 2007. The appellants have challenged the sale deed executed by Girija



Devi, respondent no.2 herein in favour of the defendant no.1, Mahipal Singh. According to the learned counsel, Girija Kuer is not the wife of late Vindhyavashini Singh and, therefore, she has no right to transfer the suit property. The appellants are the only legal heirs and a will has also been executed by Vindhyavashini Singh in favour of the appellant. The learned counsel further submitted that the learned court below by the impugned order rejected the application for injunction filed by the appellants only on the ground that the registered sale deed is in favour of the defendant no.1 said to have been executed by Girija Devi on 26.09.2007. The learned counsel submitted that if during the pendency of the suit, the respondent no.1 is not restrained from transferring the suit land, the appellants shall suffer serious loss and irreparable injury. Since the respondent no.2 is not the widow of late Vindhyavashini Singh, the balance of convenience is also in favour of the appellants. The learned court below has wrongly rejected the injunction application.

At the time of hearing of this Miscellaneous Appeal, the copy of injunction application was placed before me by the appellants. From perusal of the injunction application, it appears that the only allegation made by the appellant is that the respondent has threatened the appellant to alienate the property.

Except this, there is nothing on record. It appears that the learned court below recorded prima facie that Girija Devi is the widow of late Vindhyavashini Singh. Admittedly, the sale deed which is of the year 2007 is registered sale deed, therefore, presumption is that it is valid and genuine unless the contrary is proved. Now, therefore, unless the sale deed is set aside ultimately by the court below, the plaintiffs-appellants cannot claim any title on the suit property.

So far alienation is concerned, on the basis of only presumption for allegation of threatening, it cannot be accepted.

Therefore, I do not find any prima facie case in favour of the plaintiffs-appellants. Since the property has already been transferred, there is no balance of convenience in favour of the appellants. Accordingly, the learned trial court rightly rejected the injunction application.

Thus, this Miscellaneous Appeal is dismissed.

**(Mungeshwar Sahoo, J)**

Saurabh/-

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