

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.20 of 2014

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1. Laxmi Devi W/O Sri Devendra Tiwary
2. Alok Ranjan S/O Sri Devendra Tiwary Both Resident Of Mohalla- Mithanpura, P.S- Mithanpura, P.O- Ramna, District- Muzaffarpur.

.... Appellant/s

Versus

1. Devendra Tiwary S/O Late Binda Tiwary
2. Anurag Ranjan S/O Sri Devendra Tiwary Both 1 And 2, Resident Of Mohalla- Mithanpura, P.S- Mithanpura, Lala, P.O- Ramna, District- Muzaffarpur
3. Aloka Rani W/O Mr. Sanjay Kumar, D/O Devendra Tiwary C/O Sri Laxmi Narayan Singh, Azad Colony, Road No. 1, Mohalla- Maripur, P.O- Maripur, District- Muzaffar.
4. Harendra Tiwary S/O Late Binda Tiwary
5. Akhilesh Tiwary S/O Sri Harendra Tiwary
6. Rajesh Tiwary S/O Sri Harendra Tiwary
7. Dilip Kumar S/O Sri Harendra Tiwary All 4 To 7 Resident Of Mohalla- Mithanpura, Lala, P.S- Mithanpura, P.O- Ramna, District- Muzaffarpur.
8. T.D.S. Project And Construction Pvt. Ltd Of 313- 314 Apna Bazar, Gurgaon- 122001, Haryana, India Having Its Director Mr. Shivendra Vats S/O Shri C.D. Sharma 53 Anandpuri Colony (Saidapur), P.S- Khagaul Danapur, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Uday Prakash Sharma, Advocate.

For the Respondent/s : Mr. Bindhyachal Rai, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-09-2015

Heard learned counsel for the appellants and learned counsel for respondent no.8- Builder.

In this present appeal the appellants are challenging the order dated 31.10.2013 passed in Partition Suit No.401 of 2013 by the Sub Judge Ist, Muzaffarpur by which he has refused to grant injunction in favour of the appellants.

The appellants are sons of Devendra Tiwary who has been arrayed as defendant no.1 along with other defendants, namely,



Harendra Tiwary, brother of Devendra Tiwary and Akhilesh Tiwary, Rajesh Tiwary and Dilip Kumar, defendant nos. 4, 5, 6 and 7 respectively and sons of Devendra Tiwary have also been made as defendants. Devendra Tiwary has entered into an agreement for development of land in the year 2011. Thereafter construction of building started by the developer and substantial construction has already been made. It is the father who entered into agreement and handed over the land to developer. Though learned counsel for the appellants submits that before entering into agreement father was required to take consent of appellants and other coparcener but he did not do so, but out of his own volition, he entered into agreement. Appellant has taken a plea that unless partition is affected by meats and bounds every coparcener has a right over every portion of land. Possession of a coparcener is possession of all and as such the court below has wrongly refused to grant injunction. He has placed reliance on certain judgments (i) Mandali Ranganna and others v. T. Ramachandra and others, reported in AIR 2008 SC 2291, (ii) 1998 (2) Anil singh v. Nimai Ghosh and others, reported in BLJR 1233 paragraph no.10.

Respondent Builder has submitted neither at the time of agreement nor at the time of initiation of construction these appellants have ever objected and resisted, when the construction is at the stage of completion now they are raising

grievance and trying to obtain injunction against them. So much so prospective purchasers have also invested huge money for purchas of flat in that building.

Basic grievance of the appellants is that at the time of entering agreement, consent of appellants was not taken. While granting or refusing the injunction the court is to be satisfied with three essential ingredients. The appellants may have prima facie case, balance of convenience but certainly not irreparable loss if any will be compensated in terms of money at the time of final hearing of the suit. Any construction over the land will be subject to the result of the suit.

The judgment of this Court as well as Hon'ble Supreme Court cited by the appellants does not support the contention of learned counsel for the appellants.

With the aforesaid observation and direction this appeal is disposed of.

The court below is directed to expedite the trial subject to co-operation extended by the parties.

Vinay/-

(Shivaji Pandey, J)

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