

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.422 of 2013

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1. Most. Lalita Dev, wife of Late Srikant Mishra.
 2. Suresh Kumar Mishra.
 3. Upendra Mishra.
 4. Birendra Mishra @ Birendra Kumar Mishra.
 5. Binod Mishra @ Binod Kumar Mishra.
 6. Kishore Kumar Mishra.
 7. Pradeep Mishra @ Pradeep Kumar Mishra @ Pappu.
 8. Chandan Mishra @ Chandan Kumar Mishra @ Chandrodaya Kumar Mishra,
Nos. 2 to 8 sons of Late Srikant Mishra, all residents of village Dharm seni, P.S.+
District- Saharsa, present residing at Kayash Tola, Ward No. 29, P.S.+ District-
Saharsa.

.... Plaintiffs/Appellants

Versus

1. Sri Nagendra Mishra.
2. Sri Rajendra Mishra.
3. Sri Satyandra Mishra @ Saga.
4. Sri Amrendra Mishra @ Aaga.
All residents of village Dharm seni, P.O. + District- Saharsa.
.... .. Defendants 1st party/respondents 1st set.
5. Most Kusma Devi, wife of Late Jaikant Mishra.
6. Sri Krishna Mohan Mishra.
7. Sri Brij Mohan Mishra.
8. Sri Mohan Mishra.
9. Sri Vijay Mohan Mishra.
10. Sri Ajay Kumar Mishra @ Gandhi Mishra.
All sons of Late Jaikant Mishra, All residents of village Dharm seni, P.O. +
District- Saharsa, presently residing at Kayasth Tola, Ward No. 30, P.O. +
District – Saharsa.
11. Most. Jaimala Devi, wife of Late Satyadeo Jha, resident of village Patuaha,
P.O.-District- Saharsa.
.... Defendant 3rd party/respondent 3rd set.
12. Sri Dinesh Kumar Nandan, son of Sri Ram Nandan Prasad Yadav, resident of
village Irkaha, P.S.- Shankarpur, District- Madhepura.
.... Defendant 4th party/respondent 4th set.
13. Smt. Baijyanti Devi, Wife of Sri Suresh Chandra, resident of Gangjala, Ward
No. 9, P.S. + District- Saharsa.
... Defendant 5th party/respondent 5th set.
14. Smt. Sadhna Rani, wife of Tapeswar Yadav, resident of village Gangjala,
P.S.+District- Saharsa.
... Defendant 6th party/respondent 6th set.
15. Smt. Janak Nandani Devi, wife of Sri Laxmi Narayan Yadav, reident of
village Mobarakpur, P.S.- Salkhua, District- Saharsa.
... Defendant 7th party/respondent 7th set.
16. Sri Anil Kumar, son of Sri Laxmi Narayan Yadav, resident of village
Mobarakpur, P.S.- Salkhua, District- Saharsa.
... Defendant 8th party/respondent 8th set.
17. Miss. Kumari Jusi, daughter of Sri Anil Kumar Dhawan, resident of Gangjala,
Ward No. 13, P.S. + District- Saharsa.

..... Defendant 9th party/respondent 9th set.

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Appearance :

For the Appellant/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 08-04-2015

Heard learned counsel for the appellants and learned counsel for the respondents.

2. This miscellaneous appeal has been filed, under Order XLIII Rule 1(r) of the Code of Civil Procedure, by the plaintiffs/appellants against the order dated 12.02.2013 passed in Title Suit No. 217 of 2008 by the court of Sub-Judge-III, Saharsa whereunder the Sub-Judge-III, Saharsa, rejected the application dated 11.02.2012 of the plaintiffs/appellants filed, under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, to restrain the defendant/respondent nos. 12 to 17 not to damage the boundary wall and gate and raise construction and to maintain the status quo over the suit land.

3. On perusal of the impugned order, it appears that learned Sub-Judge-III, Saharsa after hearing the parties rejected the application dated 11.02.2012 filed, under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, arriving at conclusion that three sale deeds have been executed in favour of three defendants in respect to the land in dispute in the year 1992 and the suit has been filed in

the year 2008 by the plaintiffs/appellants challenging the said sale deed. The name of defendants has also been mutated. Therefore, prima facie case balance of convenience does not exist in favour of the plaintiffs/appellants.

4. I find no infirmity and illegality in the impugned order for interference with the same. Accordingly, this miscellaneous appeal is dismissed.

(Rajendra Kumar Mishra, J)

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