

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.662 of 2011

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Shyam Kumar & Ors

.... Appellant/s

Versus

Radha Krishna Pd. & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binay Kant Mani Tripathi

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

6 28-01-2015 Heard learned counsel Mr. Binay Kant Mani Tripathi on behalf of the appellants under Order 41 Rule 11 of the Code of Civil Procedure.

2. This miscellaneous appeal has been filed by the plaintiffs-appellants against the order dated 11.07.2011 passed by the learned Subordinate Judge-I, Saharsa in Title Suit No.59 of 2009 whereby the learned court below rejected the injunction application filed by the plaintiffs-appellants praying for restraining the defendant no.1 and defendant no.10 from disturbing the possession of the plaintiffs over the disputed residential house.

3. The plaintiffs filed the aforesaid Title Suit No.59 of 2009 claiming half share in the Schedule-K property and 1/5th share in Schedule-Kh property. The plaintiffs further claimed that there was partition between the plaintiffs and defendant no.1 and thereafter defendant no.1 agreed to sell his share to the plaintiffs-



appellants and advance of Rs.2,80,000/- was paid by the plaintiffs to the defendant no.1 as defendant no.1 was in need of the amount for the purpose of performing the marriage of his daughter. After receiving the said amount of Rs.2,80,000/- the possession of his share was handed over to the plaintiffs and the plaintiffs are in possession of the same. However, subsequently defendant no.1 and defendant no.10 tried to dispossess the plaintiffs from disputed residential house, i.e. the share of defendant no.1. Therefore, injunction application was filed.

4. The defendant no.10 appeared and filed show-cause alleging that defendant no.1 has sold the disputed property to the defendant no.10 and after purchase the defendant no.10 is coming in possession of the same. Therefore, there is no question of dispossessing the plaintiffs arises.

5. The learned court below after hearing the parties found that there is no prima facie case and the defendant no.10 has purchased the property through registered sale deed dated 12.03.2009 from defendant no.1 and, therefore, the plaintiffs have got no prima facie case. Accordingly, the injunction application was rejected.

6. The learned counsel for the appellants submitted that it is a residential house, therefore, the defendant no.1 had no right

to sell the same particularly when he has already received Rs.2,80,000/- and the plaintiffs-appellants are ready to pay the balance consideration amount, if any. The defendant no.10 is a stranger, therefore, he has no right to come in possession of the residential house. In fact the possession has already been delivered by defendant no.1 in favour of the plaintiffs.

7. It may be mentioned here that the suit has been filed for partition in the suit property. It is not a suit for specific performance of contract. The plaintiffs in the plaint itself disclosed the fact that there was partition and thereafter defendant no.1 agreed to sell his share in favour of the plaintiffs. The admitted fact is that the defendant no.10 has purchased the property through registered sale deed dated 12.03.2009. Now therefore, the registered document is in favour of the defendant no.10. At the time of hearing of this miscellaneous appeal, a copy of the plaint was placed before me. From perusal of the relief I find that no relief has been sought for by the plaintiffs for any declaration with respect to the registered sale deed said to have been executed by defendant no.1 in favour of defendant no.10.

8. In view of the above facts and circumstances of the case, I find that the plaintiffs-appellants have got no prima facie case and the learned court below has rightly rejected the injunction

application. Thus, this miscellaneous appeal has got no merit.
Accordingly, it is dismissed.

(Mungeshwar Sahoo, J)

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