

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.541 of 2013

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Malti Devi

.... Appellant/s

Versus

Nawal Kishore Singh @ Chinta Rai & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pankaj Maijorwar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

7 06-01-2015

Heard the learned counsel for the appellant under

Order 43 rule 1(r) of the Code of Civil Procedure against the order dated 18.06.2013 passed by the learned Sub Judge IV, Patna in Title Suit No.289 of 2011 whereby the court below rejected the injunction application filed by the plaintiff-appellant.

It appears that the plaintiff-appellant has filed the aforesaid suit for declaration that the plaintiff is the rightful owner of the suit property described in Schedule II of the plaint and is in possession of the suit property. During the pendency of the suit, amendment application was filed by the plaintiff praying for amendment in the plaint on the ground that the respondent Nos.1 to 6 herein had transferred the property to the respondent Nos.15 to 17 and accordingly, the amendment application was allowed. The purchasers have been added as party in the suit. Thereafter, injunction application was filed by the plaintiff praying for

restraining the purchasers-respondents from interfering with the peaceful possession of the plaintiff.

The purchasers appeared and filed reply to the injunction application contending inter alia that the purchasers are coming in possession of the property after their purchase in the year 2010.

By the impugned order, the court below rejected the injunction application recording a finding that at present, there is no prima facie case to record any finding regarding possession.

The learned counsel for the appellant submitted that the appellant had produced various documentary evidences in support of the fact that the appellant is in possession of the property since after purchase in the year 1992 whereas the defendants-purchasers have purchased the property in 2010. According to the learned counsel, the plaintiff is in possession, therefore, unless the respondents are restraining from dispossessing the plaintiff, the plaintiff shall suffer serious loss and irreparable injury. Since the plaintiff is in possession of the property, the balance of convenience is also in favour of the plaintiff.

Perused the order passed by the court below. It appears that the court below has recorded a finding that there is no

reliable material at this stage to record a finding as to who is in possession of the property. Admittedly, both the parties are purchasers from the owners. From the order impugned, it appears that the plaintiff has purchased more than half share of their vendor. The plaintiff has also prayed for declaration that the plaintiff is in possession of the property. Therefore, if at this stage, in the interlocutory matter any finding is recorded regarding possession then it will prejudice the parties subsequently at the stage of trial and without finding to the effect that the plaintiff is in possession of the property, no injunction can be granted in favour of the plaintiff.

I therefore, find that the learned court below has rightly rejected the injunction application. Therefore, this Miscellaneous Appeal is without any merit and accordingly, it is dismissed.

(Mungeshwar Sahoo, J)

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