

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.8710 of 2014**

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1. Nirmala Devi wife of Late Ram Badan Singh  
2. Nitesh Kumar Nirala son of Late Ram Pyare Singh Both residents of  
village Jahangira sobhani P.S. and District Khagaria.  
..... Petitioner/s

Versus

1. Raj Kumar son of Sri Suresh Singh resident of village Pandav Nagar  
Jahangira P.O. Jahangira, P.S. and District Khagaria.  
2. Deo Narayan Tanti son of Late Ram Kishun Tanti resident of village  
Sobhani, P.S. and District - Khagaria.  
3. Bijay Yadav son of Late Parmeshwar Yadav resident of village Jahangira,  
P.S. and District Khagaria.  
4. Md. Intu Jat son of Late Nazir resident of village Jahangira at present  
Jalkoura, P.S. and District Khagaria.

..... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Abinash Kumar  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**  
**ORAL ORDER**

2      03-11-2015      Heard Mr. Sukumar Sinha, the learned senior counsel  
for the petitioners and Mr. Rakesh Chandra, the learned counsel  
for the defendant-respondents.

Calling in question the order passed by the learned  
appellate court below setting aside the order granting injunction to  
the plaintiffs restraining the defendants for interfering in the  
possession of the plaintiffs over the suit land, the present  
application under Article 227 of the Constitution of India has been  
filed.



The plaintiffs filed the suit for declaration of title and confirmation of possession. The basis of the claim of title of the plaintiffs is the sale deed dated 09.10.1925 by which the suit land has been said to have been purchased by the predecessor of the plaintiffs. The defendants denied the claim of the plaintiffs and resisted the relief as prayed. During the pendency of the suit, the plaintiffs filed the petition for granting the ad interim injunction restraining the defendants from dispossessing the plaintiff from the suit land. The trial court allowed the prayer of the plaintiffs and granted the ad interim injunction, as prayed. However, in appeal, appellate court below on re-appreciation of the facts and materials has allowed the appeal and set aside the order granting injunction.

It transpires from the impugned order passed by the appellate court below that the finding has been recorded that the plaintiffs have failed to produce sale deed dated 09.10.1925 before the court which the plaintiffs have claimed to be the basis of their title over the suit land. It has also been further found by the appellate court below that though the plaintiffs have furnished the numbers of those sale deeds but on perusal of the certified copy of those sale deeds, according to the numbers as obtained and produced by the defendants, it becomes manifest that those sale

deeds do not relate to the suit land. The appellate court below, therefore, has come to the conclusion that the plaintiffs have failed to establish the prima facie case for grant of injunction and has also come to the conclusion that the trial court has erroneously recorded the finding in favour of the plaintiffs only on the basis of the alleged criminal cases filed by the plaintiffs against the defendants.

Mr. Sinha, the learned senior counsel for the petitioners has submitted that though the sale deeds in question have not been produced by the plaintiffs before the court, the revenue records support the claim of the plaintiffs and also demonstrate that the plaintiffs are in possession over the suit land. It has been, therefore, canvassed that the finding of absence of prima facie case as recorded by the appellate court below cannot be sustained.

Mr. Chandra, the learned counsel for the defendant-respondents, in turn, has submitted that the revenue records standing in the name of the plaintiffs has been rectified and the name of the defendant have been entered with regard to the suit land in the year 2011 itself.

After considering the submissions and the facts and circumstances of the case, it is manifest that the plaintiffs have

admittedly failed to produce before the court the document which is the basis of the claim of title of the plaintiffs over the suit land. There is also no explanation on behalf of the plaintiffs for non-production of that document before the court. According to the provision of the Evidence Act, the contents of a document are to be proved by primary evidence and only in the case as envisaged in Section 65, by way of adducing secondary evidence. The non-production of the sale deed by the plaintiffs and absence of any explanation in this regard would certainly lead to raising of adverse inference. This Court, therefore, has not been persuaded to interdict the impugned order passed by the appellate court below allowing the appeal and reversing the order of grant of injunction in favour of the plaintiffs.

The writ application is accordingly, dismissed.

**(V. Nath, J)**

Devendra/-

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