

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.536 of 2011

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Guddu Sharma & Ors

.... Appellant/s

Versus

Md. Qamar Ahmed Asharfi

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pravina Kumari

For the Respondent/s : Mr. Null

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

14 16-01-2015

Heard learned counsel Ms. Vagisha Pragya Vacaknavi

for the appellants and learned counsel Mr. Sanjay Kumar Singh

for the sole respondent under Order 41 Rule 11 of the Code of

Civil Procedure.

2. Earlier notices were issued to the sole respondent in this miscellaneous appeal. After notice the respondent has appeared.

3. This miscellaneous appeal has been filed by the original defendant-appellant against the order dated 01.06.2011 passed by Subordinate Judge-I, Bhagalpur in Title Suit No.44 of 2011 whereby the learned court below passed injunction order restraining the defendant-appellant from transferring the land, changing physical feature of the land by making any construction and for maintaining status quo during the pendency of the suit.



4. It appears that the aforesaid Title Suit No.44 of 2011 was filed by the plaintiff-respondent for declaration of title and recovery of possession of the suit property on the ground that he is the owner of the suit property and has been dispossessed by the defendant-appellant in the year 2010. During the pendency of the suit, injunction application was filed by the plaintiff alleging that the defendant is trying to sell the suit property and is making plotting of the suit land. The suit land measures 3.31 acres.

5. A rejoinder was filed to the said injunction application by the defendant denying all the allegations made by the plaintiff. However, by the impugned order the court below recording a clear finding that the plaintiff has got no prima facie but granted injunction restraining the defendant-appellant on the ground that it is the duty of the Court to preserve status quo of the suit property during the pendency of the suit.

6. Learned counsel for the appellants submitted that the admitted fact is that the vendor of the defendant-appellant, namely Pradumn Poddar was the raiyat, who was in possession of the suit property as pleaded by the plaintiff in the plaint itself. The defendant-appellant purchased the suit property from the said Pradumn Poddar by registered sale deed of the year 1955-1956, i.e. on 01.06.1955 and 19.05.1956 and since after purchase the



defendant-appellant was coming in possession of the property in exercise of the ownership thereon and mutation has also been done in the name of the appellant. In 145 Cr.P.C. proceeding possession of the defendant has also been declared. The court below also recorded clear finding that the plaintiff has got no prima facie but the court below passed the injunction order, which is contrary to law.

7. On the other hand, the learned counsel for the plaintiff-respondent submitted that the court below has only passed the status quo order and it is settled principles of law that during the pendency of the suit, the suit property be preserved and should not be allowed to be transferred by other side so as to make the suit infructuous. If during the pendency of the suit the defendant-appellant will transfer the property, there shall be multiplicity of proceeding and the plaintiff-respondent will be put to hardship. On this ground the learned counsel submitted that miscellaneous appeal be dismissed.

8. Perused the order passed by the court below. At the time of hearing of this miscellaneous appeal, the copy of the plaint was produced by the learned counsel appearing on behalf of the appellant. The suit has been filed by the plaintiff-respondent for declaration of title and recovery of possession of the suit property



only. Nowhere the plaintiff prayed for any declaration regarding sale deed of the defendant-appellant, which is of the year 1955-1956 obtained from Pradumn Poddar. In paragraph 5 and 6 of the plaint, the plaintiff-respondent clearly admitted that Pradumn Poddar was the raiyat, who was in possession of the property. The admitted fact is that this sale deed of the defendant-appellant is not under challenge in this suit. There is no explanation given in the plaint as to how the plaintiff came in possession of the property particularly when in 145 Cr.P.C. proceeding possession of the defendant has already been declared by order dated 18.04.1996 as pleaded in the written statement. The order of 145 Cr.P.C. proceeding was filed in the court below in support of this fact by the defendant-appellant. The court below did not consider all aspects of the matter. The court below also did not consider the fact that since more than half century the defendant-appellant is in possession of the property. There is no explanation as to how the plaintiff came in possession of the property and how he was dispossessed in the year 2010. The Hon'ble Supreme Court in the case of **Mandali Ranganna and Ors. etc. Vs. T. Ramachandra and Ors., A.I.R. 2008 Supreme Court 2291** has held that while considering an application for grant of injunction, the Court will not only take into consideration the basic elements in relation



thereto, i.e. existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequence depending upon the nature thereof. The Court dealing with such matter must make all endeavours to protect the interest of the parties.

9. Admittedly in the present case, the court below has not found prima facie case in favour of the defendant. As discussed above it will not be out of place to repeat the matter that the sale deed in favour of the defendant-appellant is not under challenge in the present suit.

10. In view of the above facts and circumstances of the case, in my opinion, the plaintiff has got no prima-facie case, therefore, the learned court below has wrongly passed the impugned order restraining the defendant-appellant from enjoyment of the suit property as owner during the pendency of the suit although plaintiff has no prima-facie case.

11. In the result, this miscellaneous appeal is allowed.

The impugned order is set aside. Injunction application filed by the plaintiff is thus rejected.

(Mungeshwar Sahoo, J)

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