

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.280 of 2010

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Smt. Prema Devi & Ors.

.... Appellant/s

Versus

Gorakh Nath Singh & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s

:

Mr. Pushkar Narain Shahi

Mr. Ritesh Kumar-1

Mr. Ravi Kumar

Mr. Sanjeet Kumar Singh

For the Respondent No.1

:

Mr. Ragib Ahsan, Sr. Advocate

For respondent No.7

:

Ms. Mahashewta Chatterjee, Advocate

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

- 15 23-01-2015 1. Heard the learned senior counsel, Mr. Pushkar Narain Shahi, on behalf of the appellant, the learned senior counsel, Mr. Ragib Ahsan, on behalf of the respondent No.1 and the learned counsel, Ms. Mahashewta Chatterjee, on behalf of the respondent No.7 under Order 41 Rule 11 of the Code of Civil Procedure.
2. This Misc. Appeal has been filed by the plaintiff appellants against the order dated 11.12.2009 passed by learned Sub Judge Ist, Danapur in Title Suit No.1 of 2009 whereby the learned Court below has rejected the application filed by the plaintiffs appellants under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying therein to restrain the defendants respondents from changing the physical feature of the suit

property and transferring the same to any other person.

3. The plaintiffs filed the aforesaid Title Suit No.1 of 2009 for declaration of title of the plaintiffs and further for declaration that the defendants have no title to the property. According to the plaintiffs, the property belonged to the ancestor, Jawahar Lal. After his death, the plaintiff are coming in possession of the property as owner thereof. However, subsequently, the defendants created some fabricated document and are trying to dispossess the plaintiff from portion of the suit property which necessitated filing the suit.

4. Subsequently, injunction application was filed by the plaintiffs in the year 2009 praying for restraining the defendants from making construction and transferring the suit property making allegation that the defendants are trying to dispossess the plaintiff and also trying to construct on the portion of the suit property. Rejoinder was filed by the defendants. After hearing the parties, the Court below by the impugned Order rejected the application.

5. The learned senior counsel, Mr. Shahi, for the appellant submitted that the defendant No.1 and 2 claimed to have purchased the property from Sangeeta and Bibha who in turn are



said to be the purchaser of the suit property from Jawahar Lal on 25.10.1991 and 20.12.1991 whereas the defendant No.7 had purchased the property from Jawahar Lal on 19.02.1992 which are forged and fabricated sale deeds. According to the learned counsel, on the basis of the said sale deeds, names have been mutated. If during the pendency of this suit, they are not restrained from making any construction, the appellant shall suffer serious loss and irreparable injury. Since, it is admitted fact that the suit property belonged to the ancestor of the appellant, i.e., Jawahar Lal, the plaintiff have got prima facie case and the balance of convenience is also in favour of the appellant. However, the Court blown wrongly rejected the said application.

6. Further, the learned senior counsel, Mr. Shahi, submitted that the names of Bibha Singh and Sangeeta Singh were mutated prior to the sale deed dated 25th October, 1991 and 20.12.1991 which clearly prove the fact that their sale deeds are forged and fabricated sale deeds. According to the learned counsel, they earlier purchased this property from cooperative society and subsequently, when they found that the society had no right to transfer the property, they created the sale deeds said to have been executed by Jawahar Lal on 25.10.1991 and

20.12.1991.

7. On the other hand, the learned senior counsel, Mr. Ahsan, appearing for the respondent No.1 and 2 submitted that the title of the plaintiffs over the suit plots are admitted. The defendants are claiming title on the basis of the registered sale deeds. The ancestor of the plaintiffs Jawahar Lal sold the property to Bibha Singh and Sangeeta Singh in the year 1991 and the present defendant respondent No.1 and 2 have purchased from them in the year 2002. These defendants respondents who were also party to the 144 proceeding and also the mutation proceeding disclosed their title on the basis of these registered sale deeds but the plaintiff did not choose even to pray for any relief regarding the registered sale deeds. In such circumstances, unless the registered sale deeds in favour of present defendant respondent No.1 and 2 and the registered sale deeds in favour of their vendor is set aside or is declared as void or avoidable or illegal, the defendant's title cannot be disputed. The learned counsel further submitted that their names have been mutated with respect to the purchased property and they are paying tax since long. In fact they have completed the construction on the suit property and enclosed the purchased property by boundary wall. They have also established hand-pump for drinking purpose. In view of the

above facts, the plaintiffs appellants have got no prima facie case, therefore, the Court below has rightly rejected the injunction application.

8. The learned counsel, Ms. Mahashesweta Chatterjee, appearing on behalf of the respondent No.7 submitted that the respondent No.7 has directly purchased the property from Jawahar Lal on 19.02.1992 and since after purchase, the names have been mutated and the respondent No.7 is also paying tax. The respondent No.7 is in possession of the property and the property has been purchased for the purpose of construction.

9. At the time of Hearing of the Appeal, a copy of the plaint was placed before me. From perusal of the plaint, I find that the plaintiff has simply filed the suit for declaration of title and non-title of the respondent. The fact that the defendant respondents have purchased through registered sale deeds is not disputed. Admittedly in the plaint, the plaintiff has not claimed any relief regarding the sale deeds of the year 1991-92 or of the year 2002. As stated above by the learned counsels, the title of the plaintiff is admitted by the defendant. However, they are claiming title through the registered sale deeds. In such circumstances at this stage, it cannot be said that the plaintiff has got prima facie

case since the defendants are also mutated and are paying tax, the balance of convenience is also not in favour of the plaintiff appellant. Further, it will not be out of place to mention here that the injunction application was filed in the year 2009 and since for last more than six years, there is no injunction order.

10. In view of the above facts and circumstances of the case, I find that the learned Court below has rightly rejected the injunction application. Therefore, the Misc. Appeal has got no merit. Accordingly, it is dismissed. However, it is made clear that any observation made in this order shall not be taken into consideration at the time of hearing of the suit by the Court below.

(Mungeshwar Sahoo, J)

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