

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.791 of 2013

=====

Manoj Kumar Sah Son of Sri Kamla Prasad, resident of Village - Lakshmipur, P.O. -Sinha , P.S. - Krishnagarh (Barhora), District - Bhojpur at presently residing at Mohalla- Tari Ara , P.O. - Ara , P.S. - Ara Nagar , District- Bhojpur.

.... Appellant/s

Versus

Binod Prasad Son of Sri Kamla Prasad, resident of Village - Lakshmipur , P.O. - Sinha, P.S. - Krishnagarh (Barhora), District - Bhojpur at presently residing at Mohalla- Tari Ara , P.O. - Ara , P.S. - Ara Nagar , District- Bhojpur.

.... Respondent/s

=====

Appearance :

For the Appellant/s : M/s Dharmendra Kumar Sinha and Uday Kumar, Adv.
For the Respondent/s : Mr. Abinash Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 14-12-2015

Heard learned counsel for the appellant and
learned counsel for the respondent.

In the present case, the appellant is challenging
the order dated 27th September 2013 by which the court below
has refused to grant the injunction in favour of the appellant.

In the present case admittedly both the parties
are own brothers, having 50% share in the premises. In the
present case, the suit has been brought for the purposes of
partition by metes and bounds. During the pendency of the suit,
the court below appointed the Pleader Commissioner who has
submitted the report, still the same has to be decided by the
court below. In the meantime, the present appellant has filed an
application making a grievance that the respondent is putting



obstruction in the common passage for being used by the appellant to go for the stair in the eastern side which has been disputed by the counsel for the respondent. He submits that already he has a passage to go to shop from the southern side which comes in his share, but the dispute of share is a subject matter of partition suit. The court below has recorded a finding of prima facie case, balance of convenience, at the same time, refused to decide the issue of injunction and recorded that the proper evidence has to be recorded with regard to the share between the parties. In the present case it appears that when the court has appointed the Pleader Commissioner who has submitted a report, in such view of the matter, the court below is obliged to decide the issue of passage till the disposal of the suit.

In such view of the matter, the court below is directed to decide the issue about the injunction with respect to putting obstruction by the respondent and causing inconvenience to the other side on the basis of material which has been produced by the parties and dispose of the same at the earliest within a period of two months from the date of receipt/production of a copy of this order.

Till the disposal of the injunction petition, the parties will maintain status quo as on to-day and the respondent will not put any obstruction in the passage which the appellant is

claiming to be using from earlier.

This Court is not deciding the case on merit.

Accordingly, this appeal is disposed of.

(Shivaji Pandey, J)

Mahesh/-

U			
---	--	--	--