

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3945 of 2012

- =====
1. Sita Ram Mahto, Son of Late Nagina Mahto.
 2. Rajan Mahto.
 3. Krishna Mahto @ Krishna Kumar.
 4. Lal Babu Mahto.
 5. Shyam Babu Mahto @ Shyambabu.
 6. Tula Mahto.
- All sons of Sita Ram Mahto.
7. Sonia Devi, Wife of Late Mohan Mahto.
 8. Sushil Mahto, Son of Late Hira Mahto.

All residents of Mohalla- Lodipur, P.S.-Budha Colony, District-Patna.

--Defendants-Respondents-Petitioners.

Versus

1. Shital Mahto, Son of Late Jagdish Mahto.
2. Durgesh Kumar.
3. Deepak Kumar (Minor).

Both Sons of Shital Mahto and minor under the guardianship of his natural father Shital Mahto who is well wisher and next friend.

All residents of Mohalla- Lodipur, P.S.-Budha Colony, District-Patna ,
now at Raghunath Tola, P.s.- Gardanibagh, District-Patna.

----Plaintiffs-Appellants-Respondent 1st Set.

4. Tufani Mahto, Son of Ram Chandra Mahto.
5. Sunil Kumar.
6. Surendra Kumar.
7. Munna Kumar.
8. Lalan Kumar (Minor)
9. Satish Kumar (Minor)

All sons of Tufani Mahto and two minors under the guardianship of their father Tufani Mahto who is their well wisher and next friend , all resident of Mohalla- Lodipur, P.S.-Budha Colony, District-Patna , at present Kamla Nehru Nagar, P.S.- Kotwali, District-Patna.

-Defendant- (not party in M.A.) –Opp.Party 2nd set-Respondent 2nd set.

=====

Appearance :

For the Petitioner/s : Mr. Jashawir Singh Arora
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

22 23-01-2015

Heard Mr J.S.Arora, the learned counsel appearing
on behalf of the petitioners.

By order dated 07.09.2012 the notices were issued
to the respondents and Mr Jha has appeared for the plaintiff-
respondents and Mr Sukumar Sinha, the learned senior counsel
has appeared for the defendant-respondent 2nd set.

Grieved by the order passed by the appellate court
allowing the appeal against the order refusing the plaintiffs' prayer
for injunction and passing the restraint order against the
defendants from alienating the suit property, the defendants have
filed this application under Article 227 of the Constitution of
India. The plaintiffs filed the suit for partition. During the
pendency of the suit, the plaintiffs filed a petition for restraining
the defendant nos.1 to 7 from alienating the suit property during
the pendency of the suit. The said petition was rejected by the trial
court. The plaintiff preferred appeal against the said order
rejecting the petition praying for injunction. By the impugned
order the appellate court below has allowed the appeal and passed
the order restraining the defendants from alienating the suit

property during the pendency of the suit.

Mr Arora, the learned counsel for the petitioners has submitted that the appellate court below has passed the order allowing the appeal even when the plaintiff-appellants therein omitted to implead all the defendants or the remaining defendants other than defendant no.1 and the heir of the deceased defendant no.7 as party respondent in the appeal. The learned counsel has also annexed the copy of the plaint and the copy of the memo of appeal with the writ application in order to substantiate his submissions. It has, therefore, been canvassed that the appeal itself was not competent and the order granting injunction could not have been passed against the defendants.

Mr Jha, the learned counsel appearing for the plaintiff-respondents and Mr Sinha, the learned senior counsel for the defendant-respondent 2nd set did not dispute the said fact that all the defendants except defendant nos. 1 and the heirs of defendant no.7 were not impleaded in the appeal before the appellate court below which was filed against the order rejecting the prayer seeking injunction against all the defendants. However, Mr Sinha, the learned senior counsel for the defendant-respondent 2nd set has accepted that the appeal before the court below was not competent in absence of other defendants also as



party-respondents therein but has submitted that the defendant-respondent 2nd set has no grievance against the impugned order of injunction as they are not intending to sell away the suit property during the pendency of the suit. Mr Jha, the learned counsel appearing for the plaintiff-respondent has also prayed that all the parties be restrained from alienating the suit property during the pendency of the suit and a direction be issued to the court below to dispose of the suit expeditiously as possible.

After considering the submissions of the learned counsel for the parties and the facts and circumstances of the case, it is admitted position that all the defendants except defendant no.1 and the heir of the deceased defendant no.7 were not impleaded as party respondent in the appellate court below where the appeal was filed by the plaintiff-respondent assailing the rejection of prayer for injunction against all the defendants. From the impugned order it is demonstrably clear that the appellate court below has passed the order of injunction restraining all the defendants from alienating the suit property during the pendency of the suit even when all the defendants were not party-respondents in the appeal.

In this backdrop of facts, this Court is not inclined to uphold the impugned order passed by the appellate court below

and direct all the parties to the suit not to alienate the suit property during the pendency of the suit. The impugned order is, accordingly, set aside and the matter is remitted back to the court below to dispose of the appeal in accordance with law afresh as expeditiously as possible.

The writ application is, accordingly, allowed with aforesaid directions.

(V. Nath, J)

Nitesh/-

U			
---	--	--	--