

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.227 of 2012

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1. Babu Birendra Kumar Singh @ Birendra Kumar Singh S/O Late Ram Kumar Singh Resident Of Mohalla- Ram Nagar, Postal Park, Road No. 4, Kaesth Toli, Patna- 800001, P.S- Jakkanpur, District and Town- Patna.
 2. Abhishek Kumar S/O Birendra Kumar Singh Resident Of Mohalla- Ram Nagar, Postal Park, Road No. 4, Kaesth Toli, Patna- 800001, P.S- Jakkanpur, District and Town- Patna.
 3. Aman Kumar S/O Birendra Kumar Singh Resident Of Mohalla- Ram Nagar, Postal Park, Road No. 4, Kaesth Toli, Patna- 800001, P.S- Jakkanpur, District and Town- Patna.

Plaintiffs.... Appellant/s

Versus

1. Smt. Saraswati Devi W/O Shri Raj Kumar Singh Resident Of Bansi Bhawan, Ram Nagar Road, P.S- Jakkanpur District and Town- Patna, P.O, G.P.O- Patna- 800001.
2. Babu Surendra Kumar Singh S/O Late Ram Kumar Singh Resident Of Mohalla- Ram Nagar, Postal Park, Road No. 4, Kaesth Toli, Patna- 800001, P.S- Jakkanpur, District- Patna.
3. Arun Kumar S/O Babu Surendra Kumar Resident Of Mohalla- Ram Nagar, Postal Park, Road No. 4, Kaesth Toli, Patna- 800001, P.S- Jakkanpur, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajib Ranjan Jha, Advocate.

For the Respondent/s : Mr. Jitendra Prasad Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 08-07-2015

Heard the parties.

2. In the present appeal the appellants are challenging the order dated 13.10.2011 passed by Sub-Judge VI, Patna in Title Partition Suit No.98 of 2004 by which he has disposed of the petition filed by the appellants for injunction under Order 39 Rule-1 of the Code of Civil Procedure which has been rejected and application filed by

respondent no.1 to make construction has been allowed at her own risk.

3. It appears that appellants and respondent nos. 2 and 3 are co-sharers. The plaintiff has filed a partition suit of land attached with the constructed house claiming that there was no partition by meats and bounds requires partition between the two brothers. As it appears from the record that a plot of land appertaining to Tauzi No. 240, Thana No.7, Khata No.209, Khetab No.4, Khesra No.1 situated at Mauza Navratanpur, Nandlalpur, P.S. Kadamkuan, District-Patna was purchased through a registered sale deed dated 29.12.1955 in the name of Babu Surendra Kumar Singh plaintiff no.1 and Babu Birendra Kuamr Singh defendant no.1 and under the guardianship of their father Babu Ram Kumar Singh from Bharat Rai. Plaintiff no.1 and defendant no.1 sold one Katha of land in favour of Mohan Prasad Yadav. Similarly plaintiff no.1 and defendant no.1 also sold one Katha of land out of the said plot in favour of Ram Babu and one Katha in favour of Bhargav Srivastava and after sale all purchasers are in possession over the sold land and rest of two Kathas of land, both of them constructed a single storied building



over one Katha of land towards southern side jointly and one Katha of land towards north remained vacant for their common use. Further case of plaintiff is that due to some inconvenience felt by family members, plaintiff no.1 and defendant no.1 started living separately. Plaintiff and his family members started living towards south portion of the said constructed portion covering an area of ten Dhurs and defendant also started living separately and constructed southern portion of the said house covering approximately 10 Dhurs and subsequently plaintiff has made construction of one Latrine and bath room in the back of his portion on his own cost. He has also made construction over the roof of his portion three rooms and one latrine on his own cost. Claim of the plaintiff is that there was no partition by metes and bond as there was construction of building over one Katha and rest one Katha was left vacant.

4. The plaintiff came to know that defendants were negotiating to sale of their share of land from one Katha. He objected and filed the partition suit. He filed an injunction application in the suit making a prayer for restraining the defendants to sale the land and to prohibit the construction over the land.

5. Respondent no.1 has appeared and submitted that he has purchased the vacant land to the extent of the share of his brother after making payment of consideration amount. The Court after hearing the parties allow the construction over vacant land by the purchaser at his own cost.

6. Learned counsel for the appellants submits that appellants have right over the plot in question as it is a residential portion and an offer was not given to them to purchase that portion of land, in case of refusal to purchase then offer should have been given to the third party (purchaser).

7. Learned counsel for the purchaser submits that he has also constructed the house over the vacant portion of the land and as such the present appeal has been rendered infructuous whereupon learned counsel for the appellants submits that their passage of entry and exit has been blocked cause imminence problem which has been disputed by learned counsel for the purchaser.

8. The purchaser can construct a house at his own risk but he can not block the passage of entry and exit of the appellants. Appellants will be at liberty to file a proper



application and court below will examine as to whether the entry and exit of the appellants has been blocked by the purchaser or not. If it is found that the purchaser has blocked entry of the appellants he will be obliged to pass proper order for removal of obstruction so that egress and ingress of the appellants remained unaffected. As construction has already been made by the purchaser at his own risk no purpose will be served to pass any order of injuncton.

9. With the aforesaid observation this appeal is dismissed.

(Shivaji Pandey, J)

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