

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.100 of 2014

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Arjun Prasad Singh

.... Appellant/s

Versus

Kanchan Devi & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bishwanath Prasad Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

4 19-01-2015 **1.** Heard the learned counsel, Mr. B. N. P. Singh, on behalf
of the appellant.

2. This Misc. Appeal is directed against the order dated
16.12.2013 passed by learned Sub Judge IV, Darbhanga in title
suit No.353 of 2012 whereby the learned Court below rejected the
injunction application filed by the plaintiffs appellants for
restraining the defendants from interfering with the possession of
the defendants.

3. It appears that the plaintiff appellants filed the aforesaid
title suit No.353 of 2012 for setting side the sale deeds said to



have been executed by defendant No.4 in favour of the other defendants. According to the plaintiff, defendant No.4 is the first wife of the appellant and the appellant has purchased the suit property in the name of his wife, defendant No.4. According to the plaintiff, he purchased the property for his own benefit and exclusive enjoyment of the property. The defendant No.4 sold the property in favour of the other defendants. Thereafter, the injunction application was filed praying for injunction restraining the defendants from interfering with the possession of the plaintiff. A show cause was filed by the defendants purchasers alleging that in fact defendant No.4 was the real owner of the property and after purchase, the defendants are coming in possession of the property and mutation has been affected.

4. After hearing the parties, the learned Court below by the impugned order has rejected the injunction application recording finding that the plaintiff has got no prima facie case.

5. Perused the copy of the plaint which was placed by the learned counsel for the appellant at the time of hearing of this Misc. Appeal under Order 41 Rule 11 of the Code of Civil Procedure. The plaintiff appellant had simply prayed for setting aside sale deeds which are registered sale deeds. The plaintiff is



claiming that he is in possession of the property whereas the defendants are claiming that they are in possession of the property and they have been mutated after purchase. It is admitted fact that the property stands in the name of the defendant No.4. Prima facie, therefore, the plaintiff has to establish his title by proving that the suit property has been purchased by him in the name of his wife and in spite of the fact that the registered sale deeds have been executed and registered in favour of the purchasers, the purchasers never came in possession of the property. According to the defendants purchasers, they are in possession and they have been mutated. Now, therefore, if any finding is recorded that in spite of the fact that in 2012, the property has been sold to the defendants purchasers, the defendant purchasers never came in possession of the property and they are now trying to dispossess the plaintiff, no injunction can be granted in favour of the plaintiff. If any injunction is granted, at this stage prima facie it will amount to declaration of possession of the plaintiff. In my opinion, this question is the main dispute between the parties regarding possession which can be decided only if the evidences are produced by the parties.

6. In view of the above facts and circumstances of the case, I do not find prima facie case in favour of the plaintiff, and

therefore, there is no question of any irreparable loss or injury to the plaintiff. Accordingly, the learned Court below has rightly dismissed the injunction application. Thus, this Misc. Appeal has got no merit and it is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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