

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.624 of 2013

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Dhankeshwar Yadav

.... Appellant/s

Versus

Chandkeshwar Yadav & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Madan Jeet Kumar &
Mr. Mrigendra Kumar, Adv.

For the Respondent/s : Mr. T.N.Maitin, Sr. Adv.
Mr. Rajeev Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

6 03-09-2015

Heard counsel for the appellant and the respondents.

I.A.No. 63 of 2014 has been filed for condoning the
delay of six days in filing the appeal.

On the grounds mentioned in the I.A., the delay is
condoned and the I.A. is allowed.

In this case, father and sons are litigating.

Chandrakeshwar Yadav had filed Partition Suit
No.418 of 2012 in which with regard to Schedule-Ka property
claim has been made of 1/15th share and with regard to Schedule-
Kha property, claim has been made of 1/15th share. Father,
namely, Balkhira Yadav and mother Bachni Devi have been made
party defendant in the suit. Father is aged 83 years. He is
contemplating to alienate property comprising in Schedule-Kha
property claiming to be his self-acquired property. The ground
which has been shown to sell the property is that the sons are not
looking after their parents which compelled him to sell the

property for the purpose of substantial medical expenses and other essential expenses.

Counsel for the appellant submits that it is an undisputed fact that certain property has been purchased by father and they have also contributed in purchase of the land as well as there was sufficient nucleus generating sufficient money making capable his father being Karta to purchase the property in question. Whether it is a self-acquired property or joint family property will be only looked into during the trial, as it would require evidence from both sides to prove their respective claim.

Father is 83 years old. The purpose of alienating the property is for subsistence, including medical expenses on that ground the court has refused to grant injunction. This Court feels that the court below has not acted illegally in refusing to grant stay. During the trial even if it is decided that the Schedule-Kha property was not self-acquired property, even then the father and mother will have their own share. Any portion which goes beyond their share will be subject to the result of the suit.

With this observation and direction, this appeal is disposed of.

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(Shivaji Pandey, J)