

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.702 of 2011

1. Rameshwar Yagnik @ Lall Saheb son of Late Bindhyawasini Prasad Yagnik, resident of Modhuri Villa, Rajguru Chowk, PO-Bettiah, PS-Bettiah Town, District-West Champaran.

2. Anoop Yagnik son of Late Chandeshwar Yagnik, resident of village – Rajguru Chowk, PO-Bettiah, PS-Bettiah Town, District-West Champaran.

Vs.

1. Arun Kr. Yagnik Anup Kr. Yagnik son of Late Durga Shankar Yagnik, resident of village – Rajguru Chowk, PO-Bettiah, PS-Bettiah, Town, District-West Champaran.

2. Smt. Sudha Shukla wife of Rajiv Lachannath Shukla Shukla Sadan, Khaidora, Aligarh, PS & District-Aligarh (UP).

3. Smt. Shakuntala Dave wife of harish Dave, resident of 163, Shrinath Nagar, Sector 9A, Hiran Magri, Udaipur, Rajasthan.

4. Smt. Shobha Bhatt. Wife of Anand Shankar Bhatt, resident of 170, S.F.S. Pocket-B, Phase-I, Sheikh Sarai, New Delhi.

5. Smt. Gayatri Sharma wife of Shashi Mohan Sharma, resident of Quarter No. 321/21/II/I, BHEL, Haridwar, Uttaranchal.

6. Smt. Savitri Joshi C/o Surendra Joshi, resident of House No. K/57/152, Nawab Ki Dyodi, Lohatia, Nawapura, Banarasi (UP).

..... Respondent/s

Appearance :

For the Appellant/s :

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-09-2015

No one appears on behalf of the appellants.

On 29/09/2015 when the case was called out, no one was present on behalf of the appellants to press this appeal and the Court has recorded that if the appellant will remain absent, the Court will pass the order on the basis of material available on record.

In the present appeal, the appellant is challenging the order dated 23rd May 2011 by which the court below has refused to

grant the injunction.

In this case, the suit was filed for declaration of title, recovery of possession and also the defendant be prohibited to interfere with the possession of the land.

In the suit, the plea has been taken that there was a partition suit, vide Partition Suit No. 159 of 1949 which was disposed of on the basis of compromise, accordingly, a compromise decree was passed and the land in dispute came into share of plaintiff and Smt. Krishna Kumari Devi was given the land of Basantpur Mauza.

In the injunction petition, it has been said that if the injunction order is not passed, the defendant would alienate the property which will cause irreparable injury to the side of the plaintiff.

The defendant-respondent appeared and raised the objection stating that in 1949, the suit was for partition of jamindari, not of the land and she has stated that after enforcement of Land Ceiling Act with regard to Case No. 43 of 1975-76, a return was filed and in the return, lands were shown to have been allotted to the defendant and the plaintiff-appellant has no right, title and possession over the land in dispute.

In view of the aforesaid facts, the appellant has not in a position to dispute the aforesaid facts with regard to filing of return during the ceiling proceeding itself suggests that the plaintiff-

appellant has failed to make out a prima facie case.

In such view of the matter, this Court does not find any error in the order refusing to grant an interim order in his favour.

Accordingly, this appeal is dismissed.

(Shivaji Pandey, J)

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