

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.562 of 2016**

=====

Archna Lal

.... Appellant/s

Versus

Ramesh Choudhary & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Anil Kumar

For the Respondent/s : Mr.

=====

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

3 16-09-2016 Heard learned counsel Mr. Anil Kumar for the
petitioner.

2. Perused the order dated 30.04.2016 passed by District Judge, Sitamarhi in Miscellaneous Appeal No.11 of 2015 whereby the learned court below allowed the appeal, set aside the order of the trial court and granted injunction and both parties were directed to maintain status quo.

3. It appears that the plaintiffs-respondents filed the suit for declaration of title and recovery of possession of the suit property. The defendant claimed title on the basis of sale deed. Thereafter the plaintiffs filed an injunction application praying for restraining the defendant from making any construction alleging that he is trying to make construction over the suit property. The trial court rejected the injunction application. Against the said trial court order miscellaneous appeal was filed before the lower



appellate court. The lower appellate court considering the facts and circumstances and the pleadings of the parties held that the suit property is still vacant and there is no construction over the same. On the basis of the materials the court below also recorded finding that the plaintiffs have got prima facie case. The court below also held that the balance of convenience is in favour of the plaintiffs and if no injunction is granted, they shall suffer serious loss. Accordingly, the lower appellate court restrained the defendant from making any pucca construction during the pendency of the suit and directed the trial court to expedite the hearing of the suit, directing the parties to assist the Court for expeditious disposal.

4. The Hon'ble Supreme Court in the case of **Maharwal Khewaji Trust Vs. Baldev Dass, A.I.R. 2005 Supreme Court 104** has held that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused by the party who may ultimately succeed and may further lead to multiplicity of proceedings. The Supreme Court further in that case held that no such case of irreparable loss is made out except contending that the legal

proceedings are likely to take a long time and, therefore, the respondent should be permitted to put the scheduled property to better use. In the facts and circumstances of that case the Supreme Court set aside the order of the High Court whereby the High Court had permitted the respondents therein to change the nature of the property by putting construction.

5. In my opinion, this decision is full answer to the submission made by the learned counsel for the petitioner. As such, no case of interference in supervisory jurisdiction is made out. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Harish/-

U			
---	--	--	--