

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.793 of 2016**

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Bharat Kumar

.... Appellant/s

Versus

Ram Lakhan Bind & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anuj Kumar

For the Respondent/s : Mr.

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

2 30-09-2016

Heard learned counsel for the petitioner.

2. Perused the impugned order dated 29.02.2016 passed by the learned Additional Sessions Judge-III, Jehanabad in Miscellaneous appeal No. 10 of 2011/01 of 2015, whereby the learned appellate court has allowed the miscellaneous appeal and set aside the trial court's order granting injunction in favour of the plaintiff-petitioner.

3. It appears that the plaintiff-petitioner filed partition suit. In the partition suit, some purchasers have also been made party as defendants. Injunction was filed by the plaintiff for restraining the purchasers from disturbing the peaceful possession of the plaintiff. The purchasers-defendants filed reply to the injunction application. The trial court on the basis of the materials recorded finding that the plaintiffs had got *prima facie* case and if the defendants-purchasers are not restrained from disturbing the

peaceful possession, the plaintiff shall suffer serious loss irreparably. The purchasers then filed appeal before the lower appellate court. The lower appellate court set aside the order on the ground that the property has been mutated in the name of the purchasers, as such, the plaintiff has got no *prima facie* case.

4. Learned counsel for the petitioner submitted that there has been no partition of the suit property and, therefore, any specific property would not have been sold by the defendants/co-sharer of the plaintiff. But, in the present case, particular property has been sold and in spite of the sale, the plaintiff continued in possession of the property and the purchasers never came in possession.

5. Perused the impugned order passed by the lower appellate court. Admitted fact is that partition suit has been filed. It is also admitted fact that the sale deed has been executed in the year 2007 by one of the co-sharer in favour of the defendants-purchasers. Partition suit is of the year 2011-16 after four years from the date of execution of the sale deed. So far transfer of property by co-sharer is concerned, there is no bar for transferring the share of the co-sharer. It may be stated that a particular property cannot be claimed by the defendants when there has been no partition but it does not mean that particular property cannot be

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sold by a co-sharer. The dispute, in the present case, appears to be with regard to possession of the property sold. The registered sale deed is in favour of the purchasers and it is also admitted fact that the property sold to the purchasers is described specifically in the sale deed. The purchasers are claiming to be in possession of the property. Now, therefore, the main controversy between the parties is with regard to possession. Whether the plaintiff is in possession or the purchasers are in possession. This is the issue in the suit itself. If injunction granted in favour of the plaintiff then it will amount to declaration of possession of the plaintiff at the initial stage of the suit and, thereby, the registered sale deed existing in favour of the purchasers will be nullified.

6. It is settled principles of law that the registered sale deed is presumed to be valid and legal unless otherwise is proved by the person challenging the same. *Prima facie*, therefore, the case is against the plaintiff. In such circumstances, I find no reason to interfere with the impugned order passed by the lower appellate court. Thus, this civil miscellaneous application is dismissed.

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(Mungeshwar Sahoo, J)