

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.936 of 2016**

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Bindeshwari Prasad Yadav & Ors

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s
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Appearance :

For the Appellant/s : Mr. Kumar Goutam

For the Respondent/s : Mr. Subhash Chandra Yadav-Gp15
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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

2 26-10-2016

It appears that respondent nos.1 to 4 have wrongly been made respondents in this civil miscellaneous application. Admittedly they are not party to the Title Suit No.289 of 2015, therefore, their names are deleted.

Heard learned counsel for the petitioners.

Perused the impugned order dated 30.07.2016 passed by learned District Judge, Saharsa in Miscellaneous Appeal No.07 of 2016 whereby the lower appellate court dismissed the miscellaneous appeal and thereby confirmed the order dated 05.04.2016 passed by Subordinate Judge-I, Saharsa in Title Suit No.289 of 2015 whereby the court below has rejected the injunction application filed by the plaintiffs-petitioners under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

It appears that the plaintiffs-petitioners filed the aforesaid suit praying for declaration of title and confirmation of

possession over the suit property and also prayed for declaration that the registered sale deed of the year 2011 in favour of the defendants-respondents is illegal and thereby the defendants have not acquired any title on the suit property.

The defendants appeared and filed contesting written statement denying the case of the plaintiffs and alleged that in fact the sale deed in favour of the defendants is legal, valid and for consideration and pursuant to the registered sale deed they came in possession of the suit property.

The plaintiffs thereafter filed application for injunction praying for restraining the defendants from disturbing the peaceful possession of the plaintiffs over the suit property. Rejoinder to the application was filed by the defendants. After hearing the parties the trial court, recording a finding that the plaintiffs have got no prima facie case and that balance of convenience is not in their favour, rejected the injunction application. On appeal the lower appellate court also recorded the same finding dismissed the miscellaneous appeal.

Learned counsel for the petitioners submitted that the vendor of defendant 1st party has also filed written statement which is in support of the plaintiffs wherein he has mentioned that the defendant 1st party got the sale deed executed by him forcibly

without paying any consideration amount and this aspect of the matter has not been considered by the trial court or by the lower appellate court.

Admitted fact is that the plaintiffs have filed the suit for declaration of title and confirmation of possession. The plaintiffs have prayed for declaring the registered sale deed of the year 2011 as illegal, without consideration and did not confer title on the defendant 1st party. This dispute raised by the plaintiffs is yet to be decided. It may be mentioned here that the vendor, who has executed the sale deed in favour of defendant 1st party, has not taken any action for declaration regarding sale deed. Now, therefore, unless the registered sale deed is set aside or declared to be void sale deed or sham sale deed or without consideration, the presumption is in favour of the defendants. The plaintiffs filed the injunction application claiming to be in possession of the property whereas the defendants filed written statement claiming possession on the basis of the registered sale deed of the year 2011. Now both the parties are claiming possession over the suit property. The defendant, who is vendor of defendant 1st party, is not challenging the sale deed, therefore, if at this stage injunction is granted in favour of plaintiffs, it will amount to declaration of possession of the plaintiffs at the stage of hearing in injunction

matter. It may be mentioned here that the plaintiffs have filed the suit for declaration of title and confirmation of possession, therefore, they will be granted relief of confirmation of possession, if the plaintiffs' suit will be decreed.

In view of the above factual and legal position I find no reason to interfere with the impugned order as in no case it can be said that the orders passed by the courts below suffer from any jurisdictional error. Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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