

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1182 of 2016**

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M/s S. R. M. Builders & Ors

.... Appellant/s

Versus

M/s Surya Nest Build Ltd. & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Aditya Narayan Singh-1

For the Respondent/s : Mr.

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

NO 3 18-10-2016

Heard learned counsel for the petitioners and learned

counsel for the respondents.

2. This application under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners for setting aside the order dated 06.09.2016 passed by the learned Additional District Judge-VIII, Patna City in Miscellaneous Appeal No. 36 of 2015, whereby the lower appellate court dismissed the appeal and thereby confirmed the order dated 05.06.2015 passed by the learned Sub-Judge-IV, Patna City in T.S. No. 148 of 2015 rejecting the injunction application filed by the petitioners.

3. The plaintiffs-petitioners have filed the aforesaid suit for dissolution of partnership and for accounting. In the said suit, the plaintiffs also prayed for demolition of the construction already made by the respondents i.e. defendant first set. During the pendency of the suit, the injunction application was filed for restraining the defendant first set from making any construction on the disputed land. The trial court dismissed the injunction



application recording finding that the petitioners, herein, have got only 30 percent share in the profit of the firm and the defendant first set have got 70 percent. The trial court also recorded finding that the defendant first set are managing partners, who have invested huge amount in constructing the building and the petitioners have not at all invested anything. Against the said order, the miscellaneous appeal was filed before the appellate court. The appellate court heard both the parties and at the time of hearing of the appeal, it was conceded before the lower appellate court that the construction has already been completed by the defendant first set. The appellate court, therefore, held that this miscellaneous appeal has become now infructuous.

4. Admittedly, the injunction application was filed praying for restraining the defendants from making any construction during the pendency of the suit. Now, it is admitted before this Court also that construction has already been completed. Now, therefore, there is no question of granting injunction arises. The learned counsel for the petitioners submitted that the defendant first set, respondents, herein, may be restrained from transferring the flats to the purchasers. So far this submission is concerned, it is without any basis and no such relief was claimed either before the trial court or appellate court. Moreover, the admitted fact is that so far 9 Katha land is concerned, the petitioner No.1 as well as respondent No.1, the firms, are only

development firms. They have entered into the development agreement with the owner of the property i.e 9 Katha. The owner is not party to the suit. The petitioners are entitled to share in the profit, may it be 30%, 50%, 70% or 100%, it is not material. So far the investment is concerned, the trial court has recorded finding that the petitioners have not invested anything. So far 3 Katha land is concerned, the development agreement is between the defendant first set and the defendant second set and that part is concerned, the plaintiffs are nowhere. Now, therefore, the land owners i.e for 9 Katha and also 3 Khata are not claiming any relief against the development firms. The petitioners are partners of the firm and are entitled to the share in the profit of the firm. Therefore, ultimately if the suit will be decreed, they will have the account of the benefit and will get their share. Therefore, in my opinion, for this purpose also they are not entitled for the grant of injunction restraining the defendants from transferring the property. Accordingly, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this civil miscellaneous application is dismissed.

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(Mungeshwar Sahoo, J)