

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.394 of 2016

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Mahendra Das & Ors

.... Appellant/s

Versus

Ramrup Sah & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pankaj Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 29-11-2016 Heard learned counsel for the petitioners and learned
counsel for the respondents.

2. Perused the impugned order dated 18.03.2016 passed by learned 2nd Additional District Judge, Jamui in Civil Miscellaneous Appeal No.03 of 2012. By this order the learned 2nd Additional District Judge has confirmed the order of the learned Subordinate Judge-I, Jamui passed in Title Suit No.90 of 2011 dated 23.02.2012 whereby the trial court had allowed the injunction application.

3. The learned counsel for the petitioners submitted that while allowing the injunction application both the courts below have taken into account that in Money Lending Case No.03 of 1976 delivery of possession was effected in favour of the defendants but without there being any case made out by the plaintiffs to the effect that after the order passed by the D.C.L.R.

was set aside by District Magistrate, the possession was redelivered to the plaintiffs, the courts below have recorded finding that the plaintiffs have got prima facie case. Moreover, the lower appellate court has not recorded prima facie finding regarding possession.

4. On the other hand, the learned counsel for the respondents submitted that the trial court prima facie recorded finding regarding possession of the plaintiffs and the lower appellate court has confirmed the order.

5. Admittedly the plaintiffs have filed the suit for declaration of title and confirmation of possession. The plaintiffs are claiming to be in possession of the suit property whereas the defendants-petitioners are also claiming to be in possession of the suit property. The petitioners herein produced the order and delivery of possession report showing the delivery was given to the defendants-petitioners. No doubt, the plaintiffs produced the certified copies of the order of the Collector whereby the order of D.C.L.R. was set aside but it appears that nothing was brought on record to show that the delivery of possession effected in favour of the defendants-petitioners was redelivered to the plaintiffs. The lower appellate court without considering this fact has only held that the order of D.C.L.R. has been set aside by the revisional

court and, therefore, the plaintiffs have got prima facie case.

6. In my opinion, therefore, the court below has not considered the material fact and materials available on record in respect to the above fact. Accordingly, this civil miscellaneous application is allowed. The order passed by the lower appellate court is hereby set aside and the matter is remanded back to the lower appellate court for passing a fresh order according to law considering the case of both the parties as submitted before this Court mentioned above.

(Mungeshwar Sahoo, J)

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