

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.226 of 2016**

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Abhishek Kumar & Ors

.... Appellant/s

Versus

Geeta Jaiswal

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Viveka Nand Singh

For the Respondent/s : Mr.

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

5 22-09-2016 Heard learned counsel for the petitioners and learned
counsel for the respondent.

2. It appears that the plaintiff-petitioner filed the suit for declaration that the sale deed executed by the father of the plaintiff in favour of the defendant no.1 is without consideration, illegal and void. The defendant no.1 filed written statement alleging that the sale deed is valid, legal and for consideration and title passed to her and accordingly, she came in possession of the property.

3. An injunction application was filed by defendant no.1 for restraining the plaintiff from disturbing the peaceful possession of defendant no.1. Reply was filed to the effect that in fact the plaintiff is in possession of the same and his wood logs are there. The trial court after hearing both the parties and on the basis of the evidences available on record in connection with injunction matter held that the defendant has got no prima facie case and

rejected the injunction application. On appeal the lower appellate court has allowed the appeal and the plaintiff has been restrained from disturbing the possession of defendant no.1.

4. The learned counsel for the petitioners submitted that the main question i.e. the main issue to be decided in the case is whether the plaintiff is in possession of the property or the defendant is in possession of the property. By granting injunction the lower appellate court has at this stage indirectly declared the possession of the defendant and thereby the very case of the plaintiff has been disbelieved. According to the learned counsel, the court below also considered the Pleader Commissioner's Report but then has allowed the injunction application.

5. On the other hand, the learned counsel for the respondent submitted that the sale deed is in favour of the defendant, which is of the year 1987. On the basis of the sale deed the name of defendant no.1 has been mutated with respect to the suit property in the revenue record. Therefore, on the basis of the same the lower appellate court has rightly set aside the order of the trial court and has granted injunction restraining the plaintiff from disturbing the possession of defendant no.1.

6. From perusal of the trial court order, it appears that the Pleader Commissioner's Report was called for. The Pleader



Commissioner's Report specifically mentioned that on the suit land wood logs were found and it was argued before the trial court by defendant no.1 that the plaintiff be directed to remove the wood logs. So far this finding of the trial court is concerned, the lower appellate court has not set aside the same. From perusal of the lower appellate court's order, it appears that the lower appellate court also found that there are wood logs on the disputed land and according to the plaintiff the wood logs are of the plaintiff because the plaintiff carries on saw mill business. So far the sale deed or mutation matter are concerned, these are the legal documents and on the basis of which the defendant came in possession or not is under challenge. If at this stage, therefore, injunction is granted in favour of defendant no.1 and against the plaintiff, it certainly amounts to declaration of possession of defendant no.1 and that has been done by the lower appellate court and at this stage, therefore, in my opinion, the lower appellate court has wrongly restrained the plaintiff from disturbing the possession of defendant no.1 and thereby declared the possession of defendant no.1 which is the main issue.

7. In my opinion, therefore, the lower appellate court has passed the order in the manner not permitted by law. Thus, the order passed by the lower appellate court is hereby set aside. It is

held that defendant no.1 has got no prima facie case and there is no question of balance of convenience in her favour arises. Likewise there is no question of any irreparable loss arises as the sale deed is of the year 1987 and still today nothing has been done by defendant no.1.

8. In the result, this civil miscellaneous application is allowed.

(Mungeshwar Sahoo, J)

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