

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.886 of 2012

MANOJ KUMAR SHARMA @ GONU SHARMA, ADOPTED SON OF LATE
HARI PRASAD SINGH, RESIDENT OF VILLAGE-NIZAMUDDINPUR,
POLICE STATION-JEHANABAD, DISTRICT-JEHANABAD.

.... APPELLANT/S

VERSUS

1. SATISH PRASAD SINGH.
2. SHASHI BHUSHAN PRASAD SINGH.
BOTH SONS OF LATE BHAIRO PRASAD SINGH, RESIDENT OF
VILLAGE-BARH PARSAMA, POLICE STATION-PANDARK, DISTRICT-
PATNA.
3. PRABIN KUMAR SHARMA, SON OF BHOLA SHARMA, RESIDENT OF
VILLAGE-WAINA, POLICE STATION-GHOSHI, DISTRICT-
JEHANABAD.

.... Respondent/s

Appearance:

For the Appellant/s : Mr. Ajay Kumar Sharma, Adv.

For the Respondent/s : Mr. Shailendra Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 21-06-2016

Heard learned counsel for the petitioner as well as
learned counsel for the respondents. In pursuance of order dated
18.05.2016 relevant document has been produced on supplementary
affidavit.

2. Appellant is the plaintiff. For better appreciation of the
lis the inter se relationship is to be perceived. On account of absence
of respective pleadings, as gathered from the rival submission as well
as from the order impugned, there was one Husaina Singh who had
two sons, Hari Prasad and Bacchu Prasad, name of wife of Hari
Prasad is Phulbadan Devi. Bacchu Prasad has one son Manoj Sharma
who is the plaintiff/appellant.



3. It is the case of the plaintiff/appellant that Hari Prasad happens to be issueless and on account thereof, he adopted Manoj Sharma. After death of Hari Prasad, Manoj Sharma plaintiff became absolute owner of the property. It has also been pleaded that Nilmani Devi happens to be daughter of Sadhu of Hari Prasad and defendant no.1 and 2 her daughters who has got no concern with the property of Hari Prasad and accordingly filed suit before the learned lower court asking for relief that power of attorney executed by defendant no.1 and 2 in favour of defendant no.3 be declared illegal, void not binding as well as non-enforceable, defendant no.3 be restrained from transferring Schedule-I property, suit land along with other kind of ancillary relief.

4. Respondent-defendant appeared and contested the suit by filing WS wherein it has been stated that Nilmani Devi happens to be daughter of Hari Prasad and Phul Badan Devi. It has also been pleaded that the story of adoption so propounded by plaintiff happens to be false. It has also been pleaded that after death of Phul Badan she became absolute owner of the property and through the line of inheritance, defendant no.1 and 2 inherited the property.

5. During pendency of the suit a petition has been filed on 17.09.2010 on behalf of appellant/plaintiff under Order-XXXIX Rule-1 with a prayer to injunct the respondent/defendant from transferring

land whereupon rejoinder was filed on 15.12.2010 and then, after hearing both the parties by the order impugned rejected the prayer. Hence this appeal.

6. After hearing rival submission, it is apparent that so many litigations are being fought amongst the parties. It is also apparent that since filing of instant suit in the year 2010 not even a single piece of land has been transferred and so, the apprehension whatsoever been at the end of the appellant/plaintiff is found mere apprehension and has got no substance.

7. Furthermore, a finding while tracing out a prima facie case will certainly attract adjudication over the theme of adoption which, in the present nature of controversy is not found appropriate to be decided going in depth without appreciating the oral as well as documentary evidence and further, will adversely affect upon the interest of the rival party during course of trial as, may influence the trial court and further, considering that since 2010 nothing has been complained regarding activity of the parties, therefore, instead of adjudicating upon the propriety of the order impugned coupled with applicability of injunction the learned lower court is directed to proceed with the trial expeditiously so that it be concluded within six months and for that, both the parties are directed to sincerely co-operate.

8. With the aforesaid observation, instant appeal is disposed of.

(Aditya Kumar Trivedi, J.)

PN/-

AFR/NAFR	AFR
CAV DATE	
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