

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16534 of 2015

Prashuram Singh

.... Petitioner/s

Versus

Ram Awatar Yadav & Ors

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar Gupta

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 18-10-2016 Heard the learned counsel for the petitioner and the learned counsel for the respondent.

This application under Article 227 of the Constitution of India has been filed by the plaintiff-appellant-petitioner for setting aside the order passed by the appellate Court, i.e., District Judge, Buxar in Misc. Appeal No.7 of 2013 whereby the appellate Court dismissed the Misc. Appeal and confirmed the order of the trial Court dated 23.5.2013 passed in Title Suit No.104 of 2012 rejecting the plaintiff petitioners injunction application.

From perusal of the trial Court order, it appears that the trial Court rejected the injunction application recording a finding against the plaintiffs on all the three ingredients for the grant of injunction, i.e., prima facie case, balance of convenience and irreparable loss or injury. However, the lower appellate Court who is required to apply his judicial mind independently and

record separate finding on these three ingredients, framed only one question that whether the order dated 23.5.2013 passed in Title Suit No.104 of 2012 is fit to be set aside. The lower appellate Court has not at all applied his judicial mind and recorded any finding on the ingredients stated above. He acted just like a revisional Court and tested the order of the trial Court. Ultimately, he recorded finding that the order passed by the trial Court is not illegal. On this score alone, the order of the appellate Court is liable to be set aside.

In the result, this writ application is allowed. The order of the appellate Court dated 10th August, 2015 passed in Misc. Appeal No.7 of 2013 by District Judge, Buxar is hereby set aside. The matter is remanded back to the lower Appellate Court for a fresh decision on the Misc. Appeal on merit according to law after hearing both the parties.

(Mungeshwar Sahoo, J)

Sanjeev/-

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