

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12396 of 2014

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Jyoti Gupta, W/o Vijay Kumar Gupta, Resident of Mohalla Saraiyaganj, Tower Chowk, in front of G. Choudhary Sweet House, P.S. Town, District Muzaffarpur
.... Petitioner

Versus

Aditya Kumar Gupta @ Aditya Kishore Gupta, S/o Late Braj Kishore Gupta, Resident of Mohalla Saraiyaganj, Tower Chowk, in front of G. Choudhary Sweet House, P.S. Town, District Muzaffarpur

.... Respondent

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Appearance :

For the Petitioner : Mr. Dhanendra Choubey, Advocate
Mr. Alok Kumar Alok, Advocate

For the Respondent : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-08-2016

Heard Mr. Dhanendra Choubey, the learned counsel
appearing for the petitioner.

The legal sustainability of the order by which the
petition filed by the plaintiff-petitioner for demolishing the
construction made by the defendant over the suit land has been
rejected, is questioned in this application under Article 227 of the
Constitution of India.

The plaintiff has filed the suit for declaration of title
and possession over the suit land. It further transpires from the records
as well as from the submissions on behalf of the petitioner that the
local inspection was done by the Pleader Commissioner on the order
of the Court on 19.12.2012. Though the defendant had not appeared
till then in the suit, but the plaintiff had filed the petition for



injunction restraining the defendant from making further construction over the suit property. The defendant appeared in the suit on 28.01.2013 and thereafter the order directing the parties to maintain status quo over the suit property was passed on 04.02.2013. Alleging construction by the defendant in violation of the order of the status quo the plaintiff made a prayer for appointment of another Pleader Commissioner for local inspection. The Court allowed the prayer and appointed another Pleader Commissioner for the said purpose. After the report by the second Pleader Commissioner, the petition was filed by the plaintiff praying for demolition of the construction made by the defendant over the suit land alleging disobedience of the status quo order. The learned court below has dismissed the said petition by the impugned order.

It is manifest from perusal of the impugned order that the learned court below has refused to rely upon the report of the second Pleader Commissioner after taking notice of the fact that though the Pleader Commissioner had fixed 14.04.2013 as the date for local inspection of the suit property, but, in fact, the local inspection was made on 31.03.2013 prior to the date so fixed.

Considering the facts and circumstances, the learned court below has refused to accept the prayer as made on behalf of the plaintiff-petitioner for demolishing the construction and has passed

the order for hearing on the pending injunction petition.

In the backdrop of these facts, this Court is not inclined to interdict the impugned order invoking jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

(V. Nath, J.)

Kundan

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CAV DATE	
Uploading Date	15.11.16
Transmission Date	15.11.16