

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8495 of 2014

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Rajina Khatoon wife of Md. Usman Mian resident of village and P.O.
Dhodhi, P.S. Beldaur, District - Khagaria

.... Petitioner/s

Versus

1. Kare Miyan son of Late Hakko Miyan
2. Muslim Mian son of Late Botal Miyan
3. Ismail Mian son of Sohida Mian
4. Satrugan Ram son of Late Sukkal Ram
5. Razzak Mian
6. Ismail Mian
7. Kiyam Mian All sons of Uddin Mian
8. Gyan Mian son of Late Gulo Mian
9. Dahu Mian son of Habbi Mian
10. Chhanguri Mian son of Majo Miyan
11. Jahid Mian son of Late Ali Hasan Miyan
12. Ajoy Yadav son of Late Jantri Yadav
13. Sulo Miyan son of Late Rahim Mian
14. Jahangir Mian son of Jabbar Mian
15. Arun Kumar son of Sukraj Singh
16. Mazida Khatoon wife of Late Nizam Miyan
17. Md. Firoz
18. Md. Chunmun
19. Md. Samim all sons of Late Nizam Mian
20. Sahnaz Khatoon
21. Suba Khatoon Both Daughters of Late Nizam Mian All residents of
Village and P.O. Dhodhi, P.S. Beldaur, Distt. - Khagaria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sukumar Sinha, Sr. Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

3 28-03-2016

Heard Mr. Sukumar Sinha, learned senior counsel appearing on behalf of the petitioner.

The present application under Article 227 of the Constitution of India has been filed on behalf of the plaintiff-petitioner against the order passed by the appellate court below affirming the order passed in the title suit by which the prayer for injunction has been rejected.

The plaintiff filed the suit for declaration of his title and confirmation of possession over the suit property as described in the schedule of the plaint and alternatively the prayer for recover of possession over the same in case of dispossession. During the pendency of the suit, the plaintiff filed a petition for grant of interim injunction restraining the defendants not to interfere in peaceful possession of the plaintiff and not to change the physical feature of the suit land and to maintain status quo till the final disposal of the suit. The trial court came to the finding that the plaintiff had no prima facie case and balance of convenience was also not in favour of the plaintiff and consequently dismissed the prayer for injunction, as prayed. In appeal by the plaintiff, the appellate court below, after considering the facts and submissions on behalf of the parties has concurred with the findings of the trial court and affirmed the order rejecting

the injunction petition.

By earlier order, the petitioner was directed to bring on record the injunction petition but the same has not been brought on record. Learned senior counsel for the petitioner has, however, submitted that both the courts below have committed error of jurisdiction in not granting the prayer for injunction as made by the plaintiff. Learned counsel has also placed the order-sheet of both the courts below in detail in order to persuade this Court that illegality and material irregularity has been committed by the courts below while passing the impugned order.

After perusal of the impugned orders and considering the submissions, it is manifest that the trial court has recorded the fact that the plaintiff has half heartedly admitted the possession of the defendants over the suit land and further has also found that the said fact has been corroborated by the report of the Pleader Commissioner. The appellate court below has also considered the report of the Pleader Commissioner wherein the possession of the defendants over the suit land by constructing rooms and huts have been reported. The appellate court below has therefore come to the finding that the plaintiff has no prima facie case as well as balance of convenience and she will not suffer irreparable if her prayer for injunction is not granted. This Court has not been persuaded to

hold that the findings by the courts below are perverse or unreasonable in any manner.

Accordingly, this Court does not find any merit in this application and it is dismissed, as such.

(V. Nath, J)

Devendra/-

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