

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9978 of 2015

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Devendra Kumar Mishra @ Devendra Nath Mishra	 Petitioner/s
Versus	
Gyan Chandra Mishra	 Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Nandan Prasad
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 27-04-2016 Heard learned counsel Mr. Raj Nandan Prasad for the
petitioner.

It appears that in a suit for partition injunction application was filed by the petitioner. The trial court held that the plaintiff has got neither prima facie case nor balance of convenience is in his favour and accordingly rejected the application for injunction but while rejecting the injunction application the court below directed the parties to maintain status quo. The appeal was filed by the respondent. The appellate court held that the court could not have directed to maintain status quo particularly when the injunction prayed for by petitioner has been rejected.

Perused the order passed by the trial court as well as the appellate court. From perusal of the appellate court order, it appears that the appellate court recorded clear finding that the

plaintiff has got no prima facie case nor balance of convenience is in his favour. This is the finding of the trial court also. Therefore, concurrently both the courts below recorded the same finding.

The learned counsel for the petitioner relied upon the decision of this Court in the case of **Shambhu Sharan Tiwary & Ors Vs. Re-estate of Late Radha Raman, 2012 (2) BBCJ V-1, 126.**

From perusal of the above decision, it appears that in that case injunction was granted by this Court in a probate case relying on decision of the Supreme Court i.e.A.I.R.1962 Supreme Court 527. In the present case, it is not the fact that Order 39 Rule 1 and 2 is not applicable. When Order 39 Rule 1 and 2 is applicable the Court cannot take recourse to Section 151 of the Code of Civil Procedure to grant injunction particularly when after recording a finding that the petitioner has got no prima facie case. Thus, I do not find any reason to interfere with the impugned order in supervisory jurisdiction. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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