

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9747 of 2015

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1. Lal Babu Choudhary
2. Prem Chand Choudhary
3. Ramjee Choudhary All Sons of Late Ram Tapeswar Choudhary
resident of village Kashampha, P.O. Sukhwar, P.S. Udawant Nagar,
District Bhojpur.

.... Petitioners

Versus

1. Ram Ashan Choudhary son of Late Bhabhikshan Choudhary resident of
village kushempha , P.O. Sakhwar , P.S. Udwant Nagar , District Bhojpur.
2. Indrawati Devi wife of Suresh Choudhary , resident of village
Kushempha, P.O. Sakhwar, P.S. Udwant Nagar, District Bhojpur.
3. Most. Kanti Kuar wife of Late Lalan Choudhary
4. Diraj Choudhary
5. Deepak Choudhary Both minor sons of Late Lalan Choudhary under
guardianship of their mothr.
6. Kishan Choudhary,
7. Ved Byash Choudhary Both sons of Late Muni Choudhary
8. Amarnath Choudhary son of Late Bhuneshwar Choudhary
9. Dwarika Choudhary
10. Siyaram Choudhary Both sons of Late Mirja Choudhary All 3 to 10
resident of village Kusumha, P.O. Sakhuwan , P.S. Udawant Nagar,
District Bhojpur.

.... Respondents

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Appearance:

For the Petitioners : Mr. Arvind Kumar
For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 26-04-2016 Heard learned counsel, Mr. Arvind Kumar, for the

petitioner.

The plaintiff-appellant-petitioners have filed this

application under Article 227 of the Constitution of India against

the judgment and order dated 25.05.2015 passed by Additional

District Judge-V, Arah in Miscellaneous Appeal No. 29 of 2013



whereby the Lower Appellate Court dismissed the appeal and thereby confirmed the order dated 15.07.2013 passed by learned Sub Judge 1st, Arah in Title Suit No. 522 of 2013 and refused to grant injunction recording finding that the plaintiff has got no prima-facie case and the balance of convenience is also not in favour of the plaintiff-petitioners.

The plaintiff filed the Suit for setting aside the sale deed and the sale deed has been executed by the defendant first set in favour of the purchasers. The defendants first set as well as second set appeared and filed contesting the written statement alleging that, in fact, there was oral partition between the plaintiff and the defendant first set and after partition the house premises alleged in the share of the defendant first set remained abandoned, therefore, he sold the property in favour of the defendant second set by registered sale deed dated 20.03.2013. Therefore, the present plaintiff petitioners filed application under Order 39 Rule 1 & 2 of the Code of Civil Procedure praying for restraining the defendants from dispossessing the plaintiffs from the Suit Premises.

The Trial Court after hearing both the parties by the order aforesaid recorded finding that the plaintiff has got no prima-facie case for the grant of injunction which has been

confirmed by the Appellate Court.

The learned counsel for the petitioner submitted that since the undivided dwelling house is sold by the defendant first set, the purchaser is not entitled to get joint possession of the property. He has only a right to sue for partition. In support of this contention, he placed Section 44 of the Transfer of Property Act. He also relied upon the decision in the case of **Kusheshwar Purbey Vs. Shri Shri 108 Ram Janki Jee, 2014 (1) PLJR 31.**

It is admitted fact that the defendants first set has sold the dwelling house in favour of the defendant second set by registered sale deed. The question which has been raised by the plaintiff is that the property is undivided property. According to defendants, there had already been partition between the parties and after partition the same has been sold. Now therefore, the main question to be decided in the Suit is whether the case pleaded by the plaintiff that the property is undivided is correct or the case pleaded by the defendant i.e. whether there had already been partition and after partition the property has been sold is correct. At this stage, if any order for injunction restraining the defendants is passed, then naturally it will amount to recording finding that there had been no partition between the parties. This finding is dependent on the evidences and for considering the

injunction application, this finding cannot be recorded and both the Court below therefore have come to the conclusion that the plaintiff has got no prima-facie case. When both the Courts concurrently found that the plaintiff has no prima-facie case, this Court, in supervisory jurisdiction, cannot take another view on the same set of facts. Therefore, I find no reason to interfere with the impugned order and accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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