

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1288 of 2016

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Avinash Kumar Singh & Ors

.... Petitioner/s

Versus

Ashutosh Kumar Sinha & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 23-02-2016

Heard learned counsel Mr. J.S. Arora on behalf of the petitioners.

The plaintiff-petitioners have filed this application under Article 227 of the constitution of India for setting aside the order dated 14.09.2015, passed by Addl. District Judge-IV, Patna in Miscellaneous Appeal No. 16 of 2012 dismissing the appeal and thereby confirming the order dated 20.04.2012, passed in Title Suit No. 20 of 2008 by learned Munsif -3rd, Patna.

The plaintiffs filed the suit for declaration of title and permanent injunction over the suit property. The defendants filed contesting written statement. Thereafter, the petitioners filed injunction application alleging that the defendants demolished the entire structure over their area and has made it plain. They have with some malafide motive are going to start construction over it blocking the common rasta in collusion with defendant no.6, who



claimed to have purchased land adjacent west of Block no.8 and therefore, the injunction application was filed. Subsequently when he started construction, second application was filed wherein at paragraph-3 it is stated that the defendants started constructing the wall and it became evident on spot that they are going to encroach Block no.8 the common rasta. The defendants filed rejoinder to the same denying the allegation and at paragraph-5 stated that the defendants are not raising any kind of structure over the passage, whatever structure will be raised that will be within the share of these defendants. The Court below after hearing both the parties, rejected the injunction application recording finding that on apprehension only the injunction cannot be granted. The appellate Court also confirmed the said view of the trial Court.

The learned counsel for the petitioners relied upon (2009) 10 SCC 388 and submitted that on the ground of apprehension also the Court has the jurisdiction to grant injunction.

So far, this submission of the learned counsel is concerned, there is no doubt about the settled principle of law laid down by the Hon'ble Supreme Court but it will depend on facts and circumstances of each case but there cannot be straight jacket formula that whenever apprehension is raised the court must grant

injunction. In this case the case of the defendant is that, they are not constructing any structure on the passage. Therefore, Court below has rightly rejected the application. Therefore, in exercise of supervisory jurisdiction the same cannot be interfered with.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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