

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5362 of 2016

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Madarsa Arbiya Mohbiya

.... Petitioner/s

Versus

Md. Irshad Khan & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 01-08-2016

Heard the learned counsel, Mr. Rajni Ranjan Prasad for the petitioner.

It appears that plaintiff filed the suit for partition. In this partition suit, an injunction application was filed alleging that the defendant has stocked materials and is starting construction of pucca building on the disputed land which is ancestral land of the plaintiff, therefore, the defendants may be restrained from making any pucca construction. The trial court finding the case that plaintiff has got prima facie case and balance of convenience is in favour of the plaintiff directed the parties to maintain status quo. Appeal was filed by the defendant-petitioner. The appellate court confirmed the order of the trial court.

The Hon'ble Supreme Court in the case of **Maharwal Khewaji Trust (Regd.), Faridkot v. Baldev Dass, AIR 2005 Supreme Court 104** has held that "unless and until a case of

irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings.” In the said case, it appears that the appellate court and the High Court permitted the respondent to change the nature of the property by putting a construction. The Supreme Court set aside the order.

In view of the above facts and circumstances of the case and the law laid down by the Supreme Court, I do not find any merit in this application under Article 227 of the Constitution of India so as to supervise the impugned order of the trial court dated 09.04.2013 passed by Sub Judge IV, Bhojpur in Title Suit No.109 of 2012 as well as the order of the appellate court dated 16.09.2015 passed by Additional Sessions Judge V, Bhojpur at Ara in Misc. Appeal No.16 of 2013.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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