

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11941 of 2015

=====

1. Dina Nath Choudhary Son of Late Lalan Choudhary, Resident of Village and P.O. - Hirni, P.S. - Kusheshwar Asthan, District - Darbhanga.

.... Petitioner/s

Versus

1. Ram Vilas Paswan Son of Late Suraj Pawan, Resident of Village and P.O. - Hirni, P.S. - Kusheshwar Asthan, District - Darbhanga.
2. Buchchi Lal Paswan @ Buchi Lal Paswan, Son of Late Suraj Paswan, Resident of Village and P.O. - Hirni, P.S. - Kusheshwar Asthan, District - Darbhanga.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sanat Kumar Mishra

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

2 02-05-2016 Heard Mr.Anil Kumar Jha, learned Senior Counsel for the petitioner.

The learned Additional Judge-2,Benipur (Darbhanga) BY Order dated 23.6.2015 allowed Miscellaneous Appeal No. 11 of 2008 and set aside the order of injunction passed by the trial court dated 22.10.2008 in T.S.No. 23 of 2008.

It appears that the plaintiff- petitioner filed the aforesaid Suit for declaration of title and confirmation of possession over the suit property on the ground that the property has been purchased by Shashi Nath Choudhary in favour of his Sala i.e. brother-in-law, namely, Tej Narain Roy. The plaintiffs are descendants of Tej Narayan Roy. The defendant denied the



execution of the sale deed by Kari Paswan in favour of Tej Narayan Roy and claimed that they are continuing in possession of the said property. The plaintiff filed an application under Order 39, Rules 1 and 2 of the Code of Civil Procedure. The trial court passed order to the effect that the respondents shall maintain status quo during the pendency of the Suit. One of the defendants then filed Miscellaneous Appeal. The Miscellaneous Appeal has been allowed by the appellate Court recording clear finding that the plaintiff has got no prima facie case or balance of convenience is in his favour.

Learned Senior Counsel, Mr. Jha, appearing for the petitioner submitted that, in fact, the defendant has not raised the question of Benami transaction in the written statement and therefore the appellate court should not have considered the question of Benami and on that ground no finding should have been recorded. The approach of the appellate court is, therefore, wrong and on that ground the court below has wrongly recorded the finding that the plaintiff has got no prima facie. According to learned counsel it will prejudice to the plaintiff in the trial of the Suit.

Although the plaint is not annexed with the writ application, the copy of the plaint was produced before me for

perusal at the time of hearing of the writ application. The plaintiffs are claiming title on the Suit property on the basis of the sale deed said to have been executed by Kari Paswan and according to them they are in possession of the property. The defendants claimed to be in possession of the property being the heirs of Kari Paswan.

In view of the controversies in the pleadings of the parties, prima facie, it appears that both the parties are claiming possession over the suit property. The appellate Court below on these factual positions held that if the injunction is granted against the defendant then it will amount to declaration of possession of the plaintiff. Since the parties are claiming title and possession on the basis of their respective pleadings, if injunction is granted at this stage restraining the other party from interfering with the possession of other party then naturally it will amount to declaration of possession of the party in favour of whom injunction is granted. At this stage without there being any evidence the same cannot be considered. The appellate court, therefore, has rightly observed and held that no prima facie case for grant of injunction is made out. In supervisory jurisdiction if on the basis of the said material other view if possible then also the High Court cannot take other view for the purpose of supervising the order and judgment passed by the appellate court.

Reference may be made in this respect to the decision of the Supreme Court in 2010(9)SCC 385, para 16.

In view of the aforesaid, I find no merit in this writ application and accordingly this writ application is dismissed.

The finding, if any, recorded by the appellate court in the impugned order shall not prejudice either of the parties at the time of trial of the Suit nor it will operate as res judicata

(Mungeshwar Sahoo, J)

singh/-

U			
---	--	--	--