

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7723 of 2014

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Jay Prakash Sah

.... Petitioner/s

Versus

Dinesh Prasad Sah & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anish Chandra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 23-02-2016 1. Heard the learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the plaintiff petitioner for setting aside the order dated 31.01.2013 passed by the Addl. District Judge III Samastipur in M.A.No.7 of 2009 whereby the lower appellate Court dismissed the appeal and thereby confirmed the trial Court order dated 17.04.2009 passed in Title Suit No.212 of 2007 by which the trial Court had rejected the application filed by the plaintiff petitioner for injunction.

3. It appears that the plaintiff petitioner filed the aforesaid title suit for declaration that the sale deed executed by his father in favour of the defendant No.1 and 2 is illegal and they have fraudulently obtained the sale deed from the father of the plaintiff who was mentally ill and is defendant No.4 in the suit. The defendant filed

contesting written statement alleging that in fact defendant No.4, i.e., father of the plaintiff is not mentally ill and he had sold the property in good mental condition and physical condition.

4. Thereafter, the plaintiff petitioner filed application under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for restraining the defendant No.1 and 2 from making any construction on the suit property which they have purchased. The learned Court below after hearing the parties recorded finding that the plaintiff has got no prima facie case and balance of convenience is not in his favour nor he shall suffer loss or injury and nothing has been brought on record to show that on the date of the execution and registration of the sale deed in fact the father of the plaintiff was mentally not sound to execute the sale deed. This finding of the trial Court has been confirmed by the appellate Court.

5. In such view of the matter when both the Courts below have recorded a concurrent finding of fact, this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India cannot interfere with the impugned order passed by the Court below. Thus, this writ application is dismissed.

Sanjeev/-

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(Mungeshwar Sahoo, J)