

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.736 of 2016

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Sumika Devi & Anr

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar

For the Respondent/s : Mr. Ashutosh Ranjan Pandey- Aag15

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 28-09-2016 Heard learned counsel Mr. Sanjay Kumar for the
petitioners and learned A.C. to A.A.G.15 for the State.

2. Perused the order dated 20.04.2016 passed by 6th
Additional District Judge, Nalanda at Biharsharif in Miscellaneous
Appeal No.920 of 2012 whereby the lower appellate court
dismissed the appeal and thereafter confirmed the order dated
12.06.2012 passed by learned Munsif, Nalanda at Biharsharif in
Title Suit No.14 of 2012.

3. It appears that the plaintiffs-petitioners filed the
aforesaid title suit claiming easementary right of way over the land
in dispute, which is government land and school is constructing a
boundary wall. An injunction application was filed by the
plaintiffs-petitioners praying for restraining the respondents from
making construction of boundary wall on the ground that if
construction is made, the plaintiffs will have no way to go outside



from his house but the trial court considering the case of the parties and the pleadings and also the report of the Pleader Commissioner came to the conclusion that the petitioners have closed their door towards western side and are praying for injunction and claiming easementary right over the government land. Accordingly, the trial court rejected the injunction application. Thereafter, miscellaneous Appeal was filed by the plaintiff-petitioner. The lower appellate court heard the parties and categorically recorded that the Pleader Commissioner has filed the report along with a map of the suit place and from perusal of the said map filed by the Pleader Commissioner, it appears that there is sufficient space for ingress and egress of the petitioners. The lower appellate court also held that the plaintiffs closed their door towards the west and are claiming easementary right in the land of the State Government.

4. The learned counsel for the petitioners submitted that boundary wall has already been constructed by the school. According to the learned counsel, there is no such report filed by the Pleader Commissioner to the effect that in fact there was door in the western side. Therefore, the findings of both the courts below are erroneous and are error apparent on the face of the record. According to the learned counsel, the suit land is recorded

as pond but the State authorities are forcibly occupying the pond and are constructing the boundary wall for the school. The learned counsel further submitted that the lower appellate court wrongly held that from the map it appears that sufficient space is there for ingress and egress. In fact it is error of record.

5. On the other hand, the learned counsel appearing for the State submitted that the findings recorded by both the courts below that the plaintiffs-petitioners closed their door towards the western side and are claiming easementary right and that sufficient space is there for ingress and egress of the plaintiffs are pure findings of facts and, therefore, this court while exercising jurisdiction under Article 227 of the Constitution of India cannot re-appreciate the evidence and cannot modify, alter or set aside the impugned order, as if this court is sitting in appeal.

6. From perusal of the impugned orders passed by the trial court as well as by the lower appellate court, it appears that clear findings are recorded as stated above. So far the submission of learned counsel for the petitioners that those findings are error of record is concerned, it may be mentioned here that on the ground of error of record no supervisory jurisdiction can be exercised. Admittedly, according to the learned counsel for the petitioners the boundary wall has already been constructed. Now,

therefore, in view of this admitted position when construction has already been completed, there is no question of injunction arises.

7. In view of the above, in my opinion, no case for interference in exercise of supervisory jurisdiction is made out. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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