

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1221 of 2016**

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Ramnaresh Singh

.... Appellant/s

Versus

Ganesh Prasad

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kumar Kaushik

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

3 06-12-2016

Heard the learned counsel for the petitioner.

Perused the impugned judgment dated 28.06.2016 passed by Additional District Judge VI, Aurangabad in Misc. Appeal No.12 of 2013/11 of 2015 whereby the lower appellate court has dismissed the miscellaneous appeal and confirmed the order dated 03.09.2013 passed by Sub Judge III, Aurangabad in Title Suit No.54 of 2012/9 of 2012 rejecting the injunction application.

It appears that plaintiff-petitioner filed a suit for declaration of title and for removal of encroachment made by the defendant over the plaintiff's land. The plaintiff then filed injunction application praying for restraining the defendant from making any construction over the disputed encroached portion of the land by erecting pillars. The defendant filed reply to the injunction application to the effect that he is not making or



erecting any new construction on the spot. The lower appellate court recorded a finding that the plaintiff has got no prima facie case and that the balance of convenience is not in favour of the plaintiff as the plaintiff admitted that the defendant is in possession of the disputed property. The petitioner then filed miscellaneous appeal before the lower appellate court. The lower appellate court dismissed the miscellaneous appeal and confirmed the order of the trial court.

The learned counsel for the petitioner submitted that while recording a finding that the plaintiff has got no prima facie case, the Court below considered extraneous materials and has also committed errors of record and mistakes which resulted in recording a finding that the plaintiff has got no prima facie case. At the time of argument of this Civil Miscellaneous case, the learned counsel pointed out one by one the mistakes committed by the lower appellate court. The learned counsel also placed the Pleader Commissioner's report which has been annexed with the supplementary affidavit filed today wherein the Pleader Commissioner has clearly recorded that the construction over A, B, C, D area has already been completed upto 5 feet height.

In view of the findings recorded by the Court below and the lower appellate court and the Pleader Commissioner's report



that whatever construction has been made has already been completed upto 5 feet and the case of the defendant is that he is not making any new construction, in my opinion, the Courts below have rightly rejected the injunction application finding that the plaintiff has got no prima facie case.

So far the submission of the learned counsel that many mistakes have been committed or extraneous considerations have been made by the lower court is concerned, it may be mentioned here that those are not the grounds for interference in the supervisory jurisdiction. Further, the plaintiff's injunction application since 2012 has been rejected. Four years have passed and no further development has been made.

In view of the above facts and circumstances of the case, I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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