

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7221 of 2014

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1. Raju Kumar son of Late Bhagera Mahto resident of Bahari Dhwalpura,
P.S. Byepass P.O. Patna City (Begampur), District - Patna

.... Petitioner/s

Versus

1. Suresh Kumar
2. Vijay Kumar
3. Nand Kishore Kumar
4. Arjun Kumar All sons of late Ram Awtar Mahto
5. Krishna Devi D/o Late Ram Awtar Mahto All resident of Mohalla -
Bahri Dhawalpur, P.S. Byepass, P.O. Patna City (Begampur), District
Patna
6. Karuresh Kumar S/o Sri Shiv Dutta Prasad resident of village - Islampur
Mathpur, P.S. Islampur, District - Nalanda
7. Sonali Auto Pvt. Ltd. through its Director Sri Vidhan Chandra Rai S/o
Late Daroga Prasad Rai resident of Mahabir Colony, P.O. Anishabad, P.S.
Beur, District Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Jha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 18-02-2016 Heard learned counsel, Mr. D.K. Jha, appearing for
the petitioner.

2. The plaintiff filed Title Suit No. 02 of 2010 for
declaration that the sale deeds in favour of the defendants of the
year 1987-1988 are forged, fabricated, null, void and illegal and
never executed by Ramchandra Mahato, the uncle of the plaintiff.

3. The written statement was filed by the defendants claiming
that the property has been sold to Ramsakhi Devi in the year 1987-
88 and after purchasing the property, said Ram Sakhi Devi came

in possession of the property and her name was also mutated and rent receipts are granted against the payment of rent.

4. The plaintiff, thereafter, filed injunction application. The court below recorded finding that unless the sale deeds, which are of the year 1987-88 standing in the name of Ramsakhi Devi, are not set aside, there cannot be any presumption that the plaintiff is in possession. Therefore, the court below rejected the injunction application filed by the plaintiff praying for restraining the defendants from dispossessing forcefully the plaintiff from the suit property and also from transferring the same to third person.

5. The plaintiff filed miscellaneous appeal before the lower appellate court. After considering the material evidence, the lower appellate court recorded finding that the plaintiff has got no prima facie case and, accordingly, dismissed the appeal.

6. It is admitted fact that the registered sale deeds are, therefore, in the name of Ramsakhi Devi, which is of the year 1987-88. After the death of said Ramsakhi Devi, sons and husband inherited the property. The plaintiff is claiming to be in possession of the property and praying for restraining the defendants from disturbing the peaceful possession of the plaintiff. On the contrary, the defendants are claiming to be in possession of the property.

7. In view of the above rival contentions between the

parties, the main question to be decided in the suit is, which of the party is in possession of the suit property. Unless a clear finding is recorded regarding possession either of the plaintiff or defendants, on presumption only, no injunction can be granted as if any injunction is granted, it will amount to declaring possession of the plaintiff at the interlocutory stage. Therefore, both the courts below have rightly recorded the finding that the plaintiff has got no prima facie case. Thus, no interference in supervisory jurisdiction can be made. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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