

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.198 of 2017

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Smt. Usha Devi & Anr

.... Appellant/s

Versus

Smt. Manju Devi

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Varma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 04-02-2017

Heard learned counsel for the petitioners.

Perused the impugned order dated 17.12.2016 passed in Title Appeal No.26 of 2015 by A.D.J.-IX, Patna whereby the learned court below has rejected the stay application filed under Order 41 Rule 5 of the Code of Civil Procedure.

The learned counsel for the petitioners submitted that by the same order the lower appellate court also rejected the injunction application filed by the petitioners.

From perusal of the impugned order, it appears that the plaintiff-respondent filed the suit for partition. The suit has been decreed. The petitioners filed title appeal before the lower appellate court. In the meantime, the trial court is proceeding to prepare final decree. The petitioners filed stay application. By the impugned order the court below has rejected this stay application. So far this part of the order impugned is concerned, it may be



mentioned here that the final decree is also appealable and, therefore, there is no question of prejudice to the petitioners arises at this stage nor the petitioners shall suffer any loss or injury.

So far the prayer for injunction is concerned, the petitioners are at liberty to challenge the same according to Code of Civil Procedure. Since the petitioners have got the remedy under Code of Civil Procedure, this civil miscellaneous application against that part of the order rejecting the injunction application is not maintainable.

Thus, I find no 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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