

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.877 of 2016**

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Sheo Nath Ram & Ors

.... Appellant/s

Versus

Kanhaiya Ram & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar Dwivedi

For the Respondent/s : Mr.

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

- 3 02-02-2017 **1.** Heard the learned counsel for the petitioner.
- 2.** Perused the impugned order dated 18.08.2015 passed by ADJ-IVth, Buxar in Misc. Appeal No.3 of 2015 whereby the learned Addl. District Judge dismissed the Appeal and confirmed the order dated 29.01.2015 passed in Title Suit No.78 of 1999 whereby the learned Munsif had rejected the injunction application filed by the plaintiff petitioner.
- 3.** It appears that the plaintiff-petitioner filed the aforesaid suit for declaration of title and removal of encroachment from the portion of plot No.1299. The defendant filed written statement contending inter alia that in fact whatever construction has been made by him is on plot No.1298 which is the land of the State Govt. Injunction application filed by the petitioner praying for restraining the defendants from making any construction over plot No.1299. The defendant filed reply contending inter alia that he has already constructed the house up to door intel and only roofing is left. That too on plot No.1298 and not on



1299. The Trial Court considered this aspect and rejected the application. Against the said order, the plaintiff-petitioner filed Misc. Appeal No.3 of 2015. The lower appellate Court considered that the construction has already been made up to the door lintel and only roofing is left. Accordingly, the lower appellate Court held that the plaintiff had got no prima facie case and balance of convenience is also in favour of the plaintiff.

4. It may be mentioned here that in the plaint itself which was filed in the year 1999, the plaintiff alleged that defendant had started construction but no injunction order was ever passed by any of the Court and it appears that because of some proceedings taken by the plaintiff either under Section 144 or Section 145 Cr.P.C., the construction could not be completed. Now, the construction appears to have been completed and only herself is taking place further with the plaintiff is praying for reecovery of possession and after removal of encroachment, there is no question of prima facie case arises.

5. Thus, I find no reason to interfere with the impugned order passed by the Courts below in exercise of supervisory jurisdiction.

6. Accordingly, this Civil Misc. applicant is dismissed.

Sanjeev/-

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(Mungeshwar Sahoo, J)

