

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.90 of 2016**

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Dr. Syed Md. Ali Imam

.... Petitioner/s

Versus

Dina Nath Mehta & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prabhat Kumar Dipak

For the Respondent/s : Mr. Null

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

7 15-02-2017 Heard the learned senior counsel, Mr. Dhurv Narain for
the petitioner and the learned counsel for the respondents.

Perused the impugned order dated 25.01.2016 passed
by Additional District Judge VI, Patna City in Misc. Appeal
No.21(A) of 2015 whereby the learned lower appellate court has
allowed the appeal and set aside the order dated 20.05.2015 passed
by Sub Judge I, Patna City in Title Suit No.190 of 2014.

It appears that the plaintiffs-respondents filed the suit
for declaration of title only with respect to the suit property. The
defendant filed contesting written statement alleging that the
petitioner has purchased the property by registered sale deed in the
year 1968 from the purchaser of the suit property in the year 1920,
the ancestor of the plaintiff and since then the defendant is coming
in possession of the property, as such, plaintiff has got no title to
the property.



An injunction application was filed by the plaintiff praying for restraining the defendant from forcefully dispossessing the plaintiff. The defendant filed reply alleging that in fact, since 1968, the defendant is coming in possession of the property and earlier their vendors were in possession. The trial court rejected the injunction application recording a clear finding that the plaintiffs have not produced any chit of paper to show their title and possession. On appeal, the lower appellate court held that still today, the municipal record is standing in the name of the plaintiff's ancestor and, therefore, it is the strong proof of title and possession unless it is rebutted, therefore, set aside the order of the trial court and allowed the injunction application. Injunction application is Annexure 2. From perusal of this injunction application, it appears that the only ground taken by the plaintiffs-respondents is that the sale deed of the defendant is wrong and false and that the document is a collusive document.

It may be mentioned here that the plaintiffs never prayed for declaration with respect to the registered sale deed of the year 1968 on the basis of which the defendant is claiming title. The other ground taken in the injunction application by the plaintiff is that the defendant is trying to take forceful possession from the plaintiff. The plaintiffs have acquired title by adverse



possession. The lower appellate court did not consider this claim of the plaintiff and on the basis of entry in the municipal record of right held that the plaintiff has got prima facie case and balance of convenience.

It will not be out of place to mention here that the question of possession is the issue which is to be decided in the suit as the contention of both the parties is that they are in possession of the suit property. So far this is concerned, the plaintiff has pleaded only that the sale deed in favour of the defendant in the year 1968 is false and collusive. On the other hand, the defendant is claiming possession on the basis of the registered sale deed. As stated above, the plaintiff never prayed for any relief with regard to the sale deed. Now therefore, merely because the ancestor's name in the municipal record of right is continuing that too the ancestor of the plaintiff has already died and the defendant has purchased the property from the heirs of the ancestor of the plaintiff, it cannot be said that the plaintiff has got prima facie case.

In my opinion, the lower appellate court has wrongly recorded his finding without considering the settled principles of law that the registered sale deed is presumed to be genuine and valid sale deed till it is held that either it is collusive or it is sham



sale deed.

In the present case, the plaintiff never prayed for declaration with respect to the sale deed. Moreover, when both the parties are claiming possession of the suit property, if injunction is granted, it will amount to declaration of possession of the plaintiff prior to trial. In other words, the lower appellate court has prejudged the issue of possession between the parties.

Thus, this civil miscellaneous application is allowed. The order passed by the lower appellate court is hereby set aside and the order passed by the trial court is confirmed.

(Mungeshwar Sahoo, J)

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