

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.417 of 2013

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1. Most. Sheela Devi W/O Late Sheo Shankar Sah Resident Of Village Molvi Chak Nawada, P.S- Dalsingsarai, District- Samastipur., At Present Residing At Mavli Chak Nawada, P.S- Dalsingsarai, District- Samastipur.
 2. Vikash Kumar S/O Late Sheo Shankar Sah Resident Of Village Molvi Chak Nawada, P.S- Dalsingsarai, District- Samastipur., At Present Residing At Mavli Chak Nawada, P.S- Dalsingsarai, District- Samastipur.
 3. Kamini Devi W/O Sanjay Sah And D/O Most Sheela Devi And Late Sheo Shankar Sah Resident Of Village- P.O- P.S- Parihara, District-Khagaria., At Present Residing At Mavli Chak Nawada, P.S- Dalsingsarai, District- Samastipur.
 4. Kanchan Devi W/O Rakesh Roshan And D/O Most. Sheela Devi And Late Sheo Shankar Sah Resident Of Mohalla- Manish Bazar, P.O- P.S Mansih, Distt- Khagaria., At Present Residing At Mavli Chak Nawada, P.S- Dalsingsarai, District- Samastipur.
 5. Kavita Devi W/O Manoj Kumar Sah And D/O Most. Sheela Devia Nd Late Sheo Shankar Sah Resident Of Village, P.S- P.O- Bakhari, Distt- Begusarai, At Present Residing At Mavli Chak Nawada, P.S- Dalsingsarai, District- Samastipur.

.... Appellant/s

Versus

1. Smt. Meena Devi W/O Jay Kumar Sah Resident Of Village Mohamadpur, P.O- P.S- Mohidin Nagar, District- Samastipur.
2. Jay Shankar Sah S/O Late Bishundeo Sahr Resident Of Village- P.O- Ghat Nawada, P.S- Dalsingsarai, District- Samastipur.

.... Respondent/s

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Appearance :

For the Appellants : Mr. Ratan Kumar Sinha, Adv.
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 04-10-2017

Heard learned counsel for the appellants. No one
turned up on behalf of the respondents despite service of notice.

2. This miscellaneous appeal has been filed against
the order dated 24/16.03.2013 passed by the District Judge,
Samastipur in Miscellaneous Appeal No.9 of 2011, whereby the



learned lower Court dismissed the aforesaid appeal turning down the prayer of ad interim injunction of the appellants.

3. The factual matrix of the case is that Meena Devi filed Partition Suit No.49 of 2009 against the appellants and others for partition of 1/3rd share in the property in question. Appellants who were defendant nos.1 to 5 in the said case filed an injunction petition under Order-39 Rule-1 of the Code of Civil Procedure on 02.05.2011 for restraining the plaintiff and defendant no.6 of the said case from transferring the property in question and making alteration in its nature during pendency of the case. The aforesaid petition was rejected by the Court of 1st Sub Judge, Dalsingsarai. The aforesaid order of the trial Court was assailed by Defendant nos.1 to 5/appellants in Misc. Appeal No.9 of 2011 before the District Judge, Samastipur who after hearing the parties and perusing the record dismissed the aforesaid appeal and rejected the prayer of injunction sought by the appellants vide its order dated 24/16.03.2013.

4. Being aggrieved and dissatisfied with the aforesaid dismissal order, the appellants have filed the present miscellaneous appeal.

5. It is submitted by learned counsel for the appellants that the common ancestor of the parties, namely, Bishundeo Sah was the owner of the property in question. He died



leaving behind his two sons, namely, Sheo Shankar Sah and Jay Shankar Sah, defendant no.6. After the demise of Bishundeo Sah, the said Sheo Shankar Sah and Jay Shankar Sah partitioned the property in question with mutual consent and the said partition was acted upon by them. Respondent no.1 Meena Devi who happens to be the daughter of Bishundeo Sah was got married in the year 1974 and she left her share in the property in question in favour of the aforesaid two sons of Bishundeo Sah. So Meena Devi has no right, title and interest in the property in question. It is further submitted by the appellants that during pendency of the case, the said Meena Devi sold out the part of the property in question on 09.04.2011 and defendant no.6, namely, Jay Shankar Sah sold out the part of the property in question vide two sale deeds dated 17.03.2011 and now they are adamant to sell out the rest of the property in question and to change its nature. It is further submitted that the said Jay Shankar Sah had died leaving behind his widow, son and daughter, namely, appellants as his heirs and legal representatives and they happens to be co-sharers in the property in question and has got prima facie case and in case of not restraining the respondents from disposing of the rest of the property in question and changing its nature, it will result into multiplicity of litigation and would cause irreparable injury to the appellants. Hence, the impugned order passed by the learned lower Court is liable to be set aside and respondents be restrained from disposing of the rest of



the part of the property in question and changing its nature during pendency of the aforesaid suit.

6. From perusal of the record, it appears that the appellants happens to be the co-sharers of the property in question and being co-sharers they have got a right, title and interest in the property in question and a good prima facie case lies in their favour. As the property in question is the subject matter of partition and during the pendency of the case some part of it are sold to strangers by the respondents, though it is barred under Section 52 of the Transfer of Property Act but, it will give rise to the multiplicity of litigation and would cause irreparable injury to the appellants. From perusal of the impugned order, it appears that the learned lower Court has also found prima facie case in favour of the appellants but turned down the injunction prayer of the appellants on three scores. Firstly, the suit filed is simply for partition suit & fixed Court fee of Rs.250.00 only has been paid and the appellants being defendants and the co-sharers of the property in question in the said partition suit and is having same status as of the plaintiff are required to pay the ad valorem Court fee on the suit valued at Rs.2 lakhs in case of seeking injunction but as the said Court fee has not been paid by the appellants, no injunction can be granted in their favour. Secondly, as the subsequent transfer is barred by the principle of *lis pendens*, the balance of convenience does not lie in favour of the appellants and



thirdly as the appellants can be compensated by way of money no irreparable loss would cause to the appellants.

7. In my considered opinion, though the suit has been filed simply for partition but the appellants, being the co-sharers of the property in question, is not seeking any additional relief in the said suit rather simply seeking ad interim injunction to restrain the plaintiff and defendant no.6 of the said suit not to dispose of the rest of the property in question and change the nature of the property as they have already sold out the portion of the same during pendency of the case, in order to preserve the rest part of the property in question during pendency of the case and nothing else. Hence, the appellants were not required to pay ad valorem Court fee.

8. It is the settled principle of law that during the pendency of the suit property in question should be preserved. Certainly, in case of not restraining the plaintiff and defendant no.6 of the said suit from disposing of the rest of the property in question and from changing its nature it would cause multiplicity of litigation, which must be avoided in the interest of justice and irreparable injury would be caused to the appellants in case the injunction order is not passed in their favour. Thus, the balance of convenience also lies in their favour.

9. In view of the aforesaid facts and circumstances of the case, the impugned order passed by the learned lower Court is



set aside and the respondents, who happens to be the plaintiff and defendant no.6 respectively of the said partition suit are restrained not to dispose of the rest of the property in question and change its nature during pendency of the aforesaid partition suit.

10. Accordingly, this miscellaneous appeal is allowed.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2107
Transmission Date	NA

