

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.238 of 2014

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1. Reeta Devi Wife of Suresh Prasad
2. Suresh Prasad Wife of Shivnath Rai Both Resident of Mohalla- Brahampur Bridge, Sri Ramchak Shyamchok P.S. Bhagwan Bazar Distt- Saran.
..... Appellants.

Versus

1. Surendra Baheliya @ Surendra Ram Son of Late Chothu Bahelia, Resident of Village - Shyamchak (Masumganj) Police Station - Bhagwan Bazar, Post Office- Bhagwan Bazar, District - Saran
2. Champa Kuer Wife of Late Hira Baheliya
3. Bijendra Baheliya
4. Brajesh Baheliya
5. Brijnandan Baheliya
6. Dhananjay Kumar
7. Raja Babu
8. Pooja Kumari
9. Indu Devi
All are sons and daughter of Late Hira Baheliya. Respondent No. 5 to 8 are Minor sons and daughter under the Guardianship of Mother namely Chapa Kuer.
10. Prahlad Baheliya Son of Late Ganesh Baheliya
11. Prabhawati Devi Daughter of Ganesh Nonia
12. Chandrawati Devi Daughter of Late Ganesh Nonia
13. Meera Devi Daughter of Late Naresh Baheliya All resident of Shyamchak (Masumganj), Police Station - Bhagwan Bazar, Distt- Saran.
14. Subiya Khatoon Wife of Late Imdaj Ali Khan Resident of Mohalla - Brahampur, Police Station- Bhagwan Bazar, Distt- Saran.
..... Respondents.

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Appearance :

For the Appellant s : Mr. Ranjan Kumar Dubey, Adv.
Mrs. Sangeeta Sharma, Adv.
For the Respondent No.1 : Mr. Arun Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 22-11-2017

Heard learned counsel for the appellants and learned
counsel for the respondent no.1 on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred
against the order dated 03.03.2014 passed by the 1st Subordinate
Judge, Saran at Chapra in Partition Suit No.174 of 2013, whereby



the learned lower Court rejected the injunction petition of the plaintiffs of the said suit.

3. The factual matrix of the case is that plaintiff-Reeta Devi and others filed Partition Suit No.174 of 2013 for partition of their 1/3rd share in the property in question. During pendency of the said case, the plaintiffs filed an injunction petition dated 13.05.2013 to restrain the defendant no.1 from dispossessing them from the land and house described and detailed in Schedule-2 of the plaint. Defendant no.1, namely, Surendra Baheliya @ Surendra Ram filed rejoinder to the said injunction petition. After hearing the parties and perusing the record, the learned lower Court rejected the aforesaid injunction petition vide impugned order.

4. Being aggrieved and dissatisfied with the aforesaid order, the plaintiffs have preferred this miscellaneous appeal.

5. It is submitted by learned counsel for the appellants that they have purchased 1/3rd share of the property in question from one Imdad Ali Khan by a registered sale deed dated 11.09.2007 who had purchased the said land from Hira Baheliya, who happened to be co-owners to the extent of 1/3rd share of the property through a registered sale deed dated 22.09.2004. After



purchase of the said property in question, they raised construction on the same. They are running a science coaching classes in part of the building while residing in the rest part. Defendant no.1/respondent no.1 wants to dispossess them from the aforesaid land and house. Hence, they are liable to be restrained from dispossessing them from the aforesaid purchased property and the house till disposal of the suit.

6. On the other hand, learned counsel for the respondent no.1 has submitted that the said respondent has filed Partition Suit No.209 of 1994 and the said partition suit was decreed and final decree was finally prepared in the said case and on the basis of the said final decree, he has filed Execution Case No.03 of 2013. It is further submitted that the property in question is his ancestral house and by the said petition the appellants virtually want to stay the proceedings of the execution case which is not permissible in the eye of law and considering the facts and circumstances of the case the learned lower Court has rightly passed the impugned order, which is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.

7. From perusal of the record, it appears that the appellants have filed Partition Suit No.174 of 2013 for partition of their 1/3rd share in the property in question and during the



pendency of said case they filed injunction petition dated 13.05.2013 with the case that they had purchased disputed land admeasuring 19 dhurs 17 dhurki from Imdad Ali Khan who had purchased the said property from one of the co-sharers, Hira Baheliya and after purchasing the said property they got constructed a house over it and in part of the said house they are running science coaching classes and rest part is being used for residential purposes. The further case of the appellants is that the respondent no.1 filed a Partition Suit No.209/14 and obtained a final decree in the said suit without making the appellants party in the said suit. They filed petition before the Sub Judge-II to implead them in the final decree proceeding but the same was rejected. On the basis of the said final decree, respondent no.1 filed Execution Case No.3 of 2013 in the Court of Sub Judge-II, Saran at Chapra impleading the appellant-Reeta Devi as one of the judgment debtors in the said execution case. As the appellants were not party in the said partition suit, no decree was passed against them but respondent no.1 on the basis of the aforesaid execution case wants to dispossess them from the suit land and house constructed thereon. Hence, respondent no.1 be restrained from dispossessing the appellants from the aforesaid property.

8. Respondent no.1 filed show cause against the said



injunction petition with the case that Neur Bahelia had three sons, namely, Mahboob, Lulu and Dukhit. Mahboob died issueless in jointness of Lulu and Dukhit. Thus, his property devolved upon his surviving brothers Lulu and Dukhit. Subsequently, there was separation between Lulu and Dukhit. Lullu Bahelia had three sons, namely, Ganesh, Naresh and Timal. Ganesh had two sons, namely, Hira and Prahalad and three daughters, namely, Prabhawati, Dhodha Devi and Chandrawti. Naresh Bahelia had a daughter, namely, Mira Devi. Timal Bahelia had two sons, namely, Surendra and Rajesh. Out of them Rajesh Bahelia died in childhood. Said Surendra Bahelia filed a Partition Suit No.209 of 1994 against his coparceners. The said partition suit was dismissed by the Court of Sub Judge against which an appeal was preferred before the Court of District & Sessions Judge, being Appeal No.40 of 2007, which was allowed, and finally final decree was prepared and respondent no.1 filed Execution Case No.3 of 2013 on the basis of said final decree. The house in question was got constructed by respondent no.1 and his ancestors, which is used as dwelling house by him. By filing rejoinder he has prayed for rejection of the said injunction petition.

9. From perusal of the record and submissions of



the parties, it appears that the appellants want to restrain the respondent no.1 from dispossessing him from the property in question in otherwise than in due course of law during the pendency of aforesaid suit. On the other hand, as per the submission of learned counsel for respondent no.1, he is going to take possession of the property in question on the basis of decree passed in his favour by executing the said decree.

10. Considering the facts and circumstances of the case, respondent no.1 is directed not to dispossess the appellants from the property in question in otherwise than due course of law during pendency of Partition Suit No.174 of 2013. Accordingly, this appeal stands disposed of.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
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