

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.150 of 2017

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Vijay Kumar Choubey & Anr

.... Appellant/s

Versus

Manoj Kumar Choubey & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajani Kant Pandey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

- 2 28-01-2017 **1.** Heard the learned counsel for the petitioner.
- 2.** Perused the impugned order dated 17.11.2016 passed by District Judge, Kaimur at Bhabhua in Civil Misc. Appeal No.23 of 2015 whereby the learned lower appellate Court has allowed the Appeal and set aside the order dated 14.12.2015 passed by Sub Judge Ist Kaimur at Bhabhua in Partition Suit No.571 of 2015.
- 3.** It appears that the plaintiff-petitioner filed partition suit claiming partition of the suit properties. The defendant respondent appeared and filed contesting written statement alleging that there had already been previous partition.
- 4.** During the pendency of the partition suit, injunction application has been filed by the plaintiff-petitioner before the Court below praying for restraining the defendant-respondents from making any construction over plot No.878 and from selling



the plot. The Court below after hearing the parties directed the parties to maintain status quo. Against the said order, the respondent filed Misc. Appeal. The lower appellate Court has set aside the order passed by the trial Court.

5. From perusal of the order passed by the trial Court, it appears that the Court below while passing the order directing the parties to maintain status quo, has not at all considered the ingredients for grant of injunction.

6. The Hon'ble Supreme Court in *AIR 2006 SC 1474* has held that if any order of status quo without indicting what the status quo was is not proper order. The trial Court nowhere has recorded any finding regarding the prima facie case, balance of convenience and irreparable loss. In one line in the last portion only held that at present there had been no partition, therefore, the party shall maintain status quo.

7. In view of this decision of the Supreme Court, the order passed by the trial Court itself is not a legal order which is required to be passed under Order 39 Rule 1 and 2 application. From perusal of the order, it appears that the lower appellate Court considered the documentary evidences and thereafter, recorded a clear finding that the plaintiff-respondent has got no prima facie



case, nor balance of convenience is there, therefore is set aside the order passed by the trial Court.

8. In view of the above facts in exercise of supervisory jurisdiction, this Court cannot substitute its own conclusion for the purpose of supervising the order passed by the appellate Court.

9. Thus I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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