

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15459 of 2013

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1. Chhabinath Mandal Son Of Late Janki Mandal Resident Of Village - Vijay Nagar, Police Station & P.O. Bariarpur, District – Munger.
 2. Chedi Mandal Son Of Late Chilaru Mandal Resident Of Village - Jhaui Baniar, P.S. Bariarpur, P.O. Bariarpur, District – Munger.

.... Petitioner/s

Versus

Jagdish Mandal Son Of Late Chilaru Mandal Resident Of Village - Jhaui Baniar, P.S. & P.O. Bariarpur, District - Munger, At Present Residing Village Vijay Nagar, P.S. & P.O. Bariarpur, District – Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harshwardhan Sahay, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 19-01-2017

Heard Mr. Harshwardhan Sahay, learned counsel for the petitioners.

The legal acceptability of the impugned order passed by the appellate court below in Misc. Appeal No. 02 of 2013 allowing the appeal and granting the prayer for injunction as prayed by the plaintiff-respondent after setting aside the order of the trial court rejecting the prayer for injunction, has been assailed in the present application under Article 227 of the Constitution of India.

The matrix of facts discloses that the suit property initially belonged to one Shankar Prasad Tekriwal and the plaintiff-respondent



purchased the same in his name and in the name of his brother on agreed terms and conditions with his brother. As the brother (petitioner no. 2) of the plaintiff-respondent did not fulfill the conditions, the plaintiff-respondent filed T.S. No. 09 of 2006 for removal of the name of his brother (petitioner no. 2) from the sale deed and for necessary relief in that regard. The said suit (T.S. No. 09 of 2006) was decreed. The plaintiff-respondent thereafter filed the suit for declaration of his title and confirmation of possession and during the pendency of the suit filed a petition for injunction restraining the defendants (petitioner in the present application) from interfering in the possession of the plaintiff over the suit land and changing its physical features and from alienating the suit land. The trial court rejected the petition for injunction filed by the plaintiff-respondent but in appeal the appellate court below has reversed the said order and has granted the injunction as prayed by the plaintiff by the impugned order.

Mr. Sahay, learned counsel for the petitioners has submitted that the appellate court below has not properly considered the matter and has wrongly passed the impugned order.

After considering the submissions and materials on record including the orders passed by the courts below, it is manifest that the fact of the decree having been passed in the T.S. No. 09 of



2006 in favour of the plaintiff-respondent against the defendant-petitioner no. 2 has not been denied. Though, the petitioners have alleged the said decree to be ‘bala bala’ but it is not the case of the petitioners that they had taken any steps against the said decree. In view of the aforesaid facts, the exclusive title of the plaintiff over the suit land is prima facie established. The appellate court below has considered the facts and circumstances elaborately and thereafter has passed the impugned order. In this backdrop, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The present application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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