

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11051 of 2013

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Anugrah Narayan Prasad

.... Petitioner/s

Versus

Bachchi Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Null

For the Respondent/s : Mr. Null

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

7 13-09-2017 **1.** Heard the learned counsel, Mr. J. S. Arora, for the
petitioner.

2. It appears that notice were issued to the respondent by
terms of order dated 22.01.2014 and in the meantime, the
operation of the impugned order dated 21.3.2013 was stayed by
this Court. In spite of the notice, the respondent have not
appeared.

3. The only grievance of the petitioner is that the Court
below permitted the respondents to sell the properties which are
also not the subject mater of the title suit No.204 of 2011. Only
some of the properties are the subject matter. According to the
learned senior counsel, the Court below had no jurisdiction to
permit the respondents to sell the property which are not the
subject matter of the suit and so far the properties which are



subject matter of the suit are concerned, the suit has been filed by the plaintiff for declaration of title of the plaintiff and non-title of the defendant, therefore, also the Court below could not have allowed the respondents to sell the property unless it is held by the Court that the father of the respondents died after the year 1956, i.e., commencement of the Hindu Succession Act.

4. Perused the impugned order. It appears that the Court below has not considered the fact that this is a title suit wherein the plaintiff has prayed for declaration of title with respect to all the suit property and non-title of the defendant. If the defendant will be allowed to sell the property then it will prejudice the plaintiff. The main issue to be decided in the suit itself will be as to whether the defendants have got any right in the suit property or not and unless it is held that they have got right, they cannot be permitted to sell the property. So far the properties admittedly mentioned in the impugned order that those properties are not the subject matter of the suit concerned also, the Court has no jurisdiction to permit the defendant respondent to sell the same because there is no finding as to whether the property belong to the plaintiff or belonging to the defendant. The Court below permitted only saying that those are not the subject matter of the suit. According to the petitioner, those properties are the



properties of the petitioner.

5. In view of the above facts and circumstances of the case, it appears that the Court below exceeded the jurisdiction by permitting the respondent from selling the property which are not subject matter of suit and some of the properties on which the plaintiff's claim exclusive title.

6. In the result, this writ application is allowed and the impugned order dated 21.03.2013 passed by Sub Judge II, Nalanda, Bihar Sharif in Title Suit No.204 of 2011 is hereby set aside.

(Mungeshwar Sahoo, J)

Sanjeev/-

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