

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.138 of 2016

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S. M. Haroon S/o Shah Md. Mohsin deceased resident of Chak Bahauddin, P.S.
Dalsinghsarai, District Samastipur.

.... Appellant/s

Versus

1. S. M. Junaid
2. S.M. Shah Jahan
3. Md. Khurshid Alam All sons of Shah Md. Mohsin deceased resident of Chak Bahauddin, P.S. Dalsinghsarai, District Samastipur & respondent No. 2 Presently Posted as Medical Officer, vidyapati Nagar, P.H.C. Block P.O. & P.S. Vidyapati Nagar, District Samastipur.
4. Bakar Hussain@Munnu Son of late Abrar Hussain
5. Kusheshwar Das Son of Gauri Das Both Resident of Chak Bahauddin, P.S. Dalsinghsarai, District Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ratan Kumar Sinha, Adv.

For the Respondent/s : Mr. Mr. T.N. Maitin, Sr. Adv.

Mr. Saroj Kumar Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 12-05-2017

Heard Mr. Ratan Kumar Sinha, learned counsel for the petitioner and also Mr. T.N. Maitin, learned senior counsel for the respondents.

By the impugned order, the learned court below has rejected the petition dated 31.03.2015 filed by the plaintiff-petitioner seeking permission to sell a part of the suit property.



The suit has been filed by the plaintiff-petitioner for partition of his share in the suit properties. During the pendency of the suit, the order for injunction has been passed on 16.09.2011 by the learned court below restraining both the parties to the suit from alienating the suit property. The plaintiff-petitioner subsequently filed the petition seeking permission of the court for sale of the land mentioned in the said petition for the purpose of his medical treatment. In the said petition in paragraph-5, the plaintiff-petitioner has stated that the present petition is filed in view of the earlier order for injunction dated 16.09.2011. However, the trial court has rejected the said petition only on the ground that since already there is injunction order, the permission cannot be granted.

In that view of the matter, this Court finds that the learned court below has failed to exercise its jurisdiction in not considering the prayer of the plaintiff-petitioner on merits for transferring a part of the suit land for the purpose as stated in the petition. This Court, therefore, holds that the impugned order is erroneous and deserves to be overturned. It is done so, accordingly.

The present application thus stands allowed and the impugned order is set aside. The matter, however, is remitted back to the learned court below to consider the petition dated 31.03.2015 filed by the plaintiff-petitioner afresh in accordance with law after granting



opportunity of hearing to the parties. It is clarified that this Court has not expressed any opinion on the rival claims of the parties.

(V. Nath, J)

Devendra/-

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