

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.189 of 2014

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Shatrughan Singh @ Shatrughan Pd. Singh S/o Late Bishundhari Singh Resident of
Village Kurmain, P.S- Goh, District- Aurangabad.

.... Appellant/s

Versus

1. Gopal Singh S/o Late Bishundhari Singh
2. Upender Singh
3. Dharmendra Singh,
both 2 and 3 Sons of Gopal Singh
4. Ram Janam Singh
5. Jai Ram Singh
both Sons of Late Bharath Singh
6. Dhananjay Singh S/o Jai Ram Singh
7. Shailesh Kumar S/o Ram Janam Singh
8. Rohan Singh
9. Sohan Singh
both 8 and 9 S/o Late Chhotan Singh
10. Mukhdeo Singh
11. Suresh Singh Both S/o Late Mutukdhari Singh
12. Vijay Kumar Singh
13. Alok Kumar Singh
both Son of Mukhdeo Singh
14. Most. Rita Devi W/o Late Chhotan Singh
15. Most. Raj Kumari Kuer W/o Late Tapeswar Singh
16. Jitendra Kumar S/o Late Tapeswar Singh
17. Arun Kumar Singh
18. Dilip Kumar Singh
19. Bhola Singh
all Sons of Suresh Singh, all 1 to 19 Resident of Village- Kurmain, P.S- Goh,
District- Aurangabad.
20. Rajesh Singh
21. Santosh Singh
both S/o Shatrughan Singh both 20 to 21, Resident of Village- Kurmain, P.S- Goh,



District- Aurangabad.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bhubneshwar Prasad

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 03-11-2017

Heard learned counsel for the appellant as well as learned counsel for the respondent no. 6 on this miscellaneous appeal and perused the record.

2. Respondent no. 5 did not turn up in the case despite service of notice.

3. This miscellaneous appeal has been filed against the Order dated 05.02.2014 passed by Sub Judge-III, Aurangabad in Partition Suit no. 149 of 2010/ 475 of 2013 whereby the learned lower court dismissed the injunction petition of the plaintiff.

4. Factual matrix of the case is that plaintiff Satrugan Singh filed the Partition Suit no. 149 of 2010/ 475 of 2013 against the respondents for partition of his 1/6th share in the property in question. During the pendency of the said case, the plaintiff filed an injunction petition dated 10.06.2013 under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. for restraining the defendant nos. 5 and 6 of the said suit from making any new construction over plot



no. 398 till disposal of the suit.

5. The defendant no. 6 filed rejoinder against the said petition. The plaintiff also procured the report of the advocate commissioner regarding property in question.

6. After hearing the parties and perusing the record, learned lower court dismissed the aforesaid injunction petition of the plaintiff.

7. Being aggrieved and dissatisfied with the aforesaid Order, the plaintiff has preferred the present miscellaneous appeal.

8. It is submitted by the learned counsel for the appellant that the appellant has filed a partition suit against the respondents claiming unity of title and possession over suit property which is located at plot nos. 397 and 398, admeasuring of 8 decimals. There is a passage of 6 feet wide towards east between their house and that of defendant nos. 4 and 5 which is the only passage for entering into the house. The door of the appellant open towards east in the said passage and drain water also flow through it. But the defendant nos. 5 and 6 in collusion with each other want to disturb the said passage and they want to make construction in the passage and change the physical feature of the suit property. As there is no other way to discharge the water of the house and to access the house in case of making construction by the defendant



nos. 5 and 6, the house of appellant will collapse and appellant and his family members would be deprived from entering into house in that case the appellant will suffer irreparable loss.

9. The learned counsel for the respondent no. 6 has submitted that earlier there has been amicable partition between Bharat Singh and his brother long back and Bharat Singh has executed a deed of Will regarding the entire plot of 398 which is his settled land and defendant no. 6 has already preferred a Probate Case no. 21 of 2011 which is pending in the court of District Judge, Aurangabad. Hence, the appellant has got no right, title and interest over the suit property and the passage. It is further submitted that he has separated from his father and is residing in his own house constructing the same separately and the plaintiff has no share in the said house. The total area of plot no. 397 is 19 decimals and plaintiff's house is on 3 decimals only and other portion of said plot is in possession of defendant nos. 1 to 5 and other defendants and all are residing separately. Plaintiff has no share in plot no. 398 and the alleged passage is not in the use of plaintiff. It is further submitted that they have already erected a wall in the said passage at 3 feet towards west and is now not going to make any further construction in the said passage. Passage of drain water of the plaintiff has not been obstructed by any act of this defendant.



10. From perusal of advocate commissioner report filed by the appellant as annexure-4, it appears that advocate commissioner appointed by the court had visited the said plot and found that the defendant nos. 5 and 6 have encroached 3 feet land of the said passage by erecting a wall towards west of their house and now said passage is of 3 feet only.

11. In view of the aforesaid facts and circumstances of the case, in the interest of justice and on undertaking of the learned counsel for the respondent no. 6 not to make any further construction on the said passage, the respondent nos. 5 and 6 are directed not to make any further construction over the passage of 3 feet left towards west of their wall, erected by them. Accordingly, the impugned order passed by the learned lower court is set aside and this appeal is allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	N.A.

