

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.556 of 2017

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1. Rajendra Prasad @ Naman Singh, Son of late Manu Bhagat @ Muni Lal Singh,
2. Rekha Yadav, Wife of Rudal Prasad.
3. Vijay Prakash, Son of Baldeo Prasad.
4. Kundan Prakash, Son of Baldeo Prasad.
5. Amit Kumar, Son of Baldeo Prasad.
6. Dinesh Prasad Yadav, Son of Brahmdeo Bhagat.
7. Awadhesh Prasad Yadav, Son of Brahmdeo Bhagat.
8. Beni Yadav, Son of Late Luxmi Yadav, All are resident of Village- Nohta, P.S. + P.O.- Fatwah, District- Patna.

.... Appellant/s

Versus

1. Smt. Rama Devi, Wife of Late Uma Shankar Prasad.
2. Sri Mohan Prasad.
3. Sri Sohan Prasad.
4. Sri Krishna Prasad @ Budhan.
5. Shishupal Prasad.
6. Subodh Kumar.
7. Harendra Kumar Gupta. All sons of Late Uma Shankar Prasad. All are resident of Village- Mirjapur Nohtal (Kalyanpur), P.S. + P.O.- Fatwah, District- Patna.
8. Ashok Kumar Son of Late Baijnath Prasad.
9. Bachu Prasad, Son of Late Baijnath Prasad.
10. Most. Basanti Devi, Widow of late Dharmbir Prasad.
11. Prabhat Kumar, son of Late Dharmbir Prasad.
12. Shakuntala Devi, Widow of Late Ranbir Kumar Prasad.
13. Anil Kumar.
14. Sunil Kumar.
15. Dipak Kumar,
16. Babloo Kumar, All Sons of Late Ranbir Kumar Prasad.
17. Raj Kumar Prasad, Son of Late Kishore Lal.
18. Prem Kumar Son of Late Sona Lal Sao.
19. Rajendra Prasad Son of Late Sona Lal Sao. All are resident of village- Mirjapur Nohta (Kalyanpur), P.S.- Fatwah, District- Patna.
20. The Collector, Patna.
21. The District Land Acquisition Officer, Patna.
22. Mr. Dinesh Kumar, Son of Bramhdeo Gope, resident of Village- Mirzapur Nohta, P.S.- Fatuha, District- Patna.
23. Mr. Manoj Kumar, Son of late Jagdish Prasad, resident of Village- Govindpur, P.S. + P.O.- Fatuha, District- Patna.
24. Smt. Manju Devi, Wife of late Brind Singh, Resident of Village at Mauza Mundera, P.S. + P.S.- Fatuha, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Aditya Narayan Singh-1

For the Private Respondent/s : Mr. Sanjeev Kumar Mishra, advocate.

For the state : Mr. G.P. Jha, G.A.-7, Ashra GYAN

PRAKASH OJHA (GA 7) : Mr. G. Krishna.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date: 18-04-2018

Heard learned counsel for the appellants as well as learned counsel for the Respondents 1st set and 2nd set.

The appellants were defendants in the court below where the plaintiffs had filed a suit for declaration of his perfect right, title and confirmation of possession in respect of the suit property.

The present appeal has been filed for setting aside the order dated 27.03.2017 passed in Title Suit No. 480 of 2012 by the learned Sub Judge- VI, Patna City filed by the appellants under order 39 Rule 1 and 2 read with Section 151 of Cr. P. C.

The claim of the plaintiffs in the Court below is founded on a sale deed, executed in favour of ancestors of plaintiffs in the year 1909.

The plaintiffs have also prayed that the amount of compensation in respect of part of the land of the suit property, which has been taken by the instant appellant (defendants in the Court below), should be realized from them.

The defendants had filed an application in the Court below for injunction restraining the plaintiffs from dispossessing the defendants and from altering the nature of the suit lands. The same has been rejected by the court of learned Sub Judge-VI, Patna City under order dated 07.09.2016, which is the order under Appeal in the instant case.



By rejecting the defendants' claim for interim injunction, the Court below has taken note that the defendants have not produced any documents in support of their right to the land. It is also obvious from the records that no such threat or cause has been stated in the petition filed under order 39 Rule 1 and 2 CPC to necessitate issuing of any interim order.

On the other hand, the plaintiffs in support of their prayer made in the suit have relied upon the sale deed of the year, 1909. It is submitted by the learned counsel for the appellants that the Court below has failed to consider that the pleadings of the plaintiffs itself shows that the instant appellants/defendants was in possession of 0.83 acres out of 1.83 acres of land out of the suit property.

The appellants refer to the relevant pleadings made in this respect in paragraph -6 of the plaint, filed by the respondents. Such pleadings made by the respondents in their plaint merely go to show that the appellants (defendants) have obtained some amount of compensation in respect of land to the extent of 0.83 acres, which was in their possession. The same can by no implication, be considered to be an admission that the defendants were in possession of the entire suit land, measuring 1.83 acres.

Since, the petition filed in the order 39 Rule 1 and 2 CPC read with Section 151 of Code of Civil Procedure is not supported by any document showing right and title of the defendants and since the plaintiff on the other hand has filed the suit on the basis of registered



sale deed of the year 1909, the Court below has rightly came to a conclusion that the defendant could not establish prima-facie case, let alone strong primfacie case for issuance of interim injunction under order 39 Rule 1 and 2 CPC.

As noticed above, in the petition filed under Order 39 Rule 1 and 2 CPC filed by the appellant, he has also not made out any reasonable apprehension or threat to the suit land, so as to occasion any irreparable injury. Thus, balance of convenience also did not lie in favour of the defendants.

This Court finds no infirmity in the order of 27th March, 2017 passed in Title Suit No. 480/ 2012 rejecting the petition of the defendants under order 39 Rule 1 and 2.

The appeal is accordingly, dismissed.

(Madhuresh Prasad, J)

Sudha/-

AFR/NAFR	NAFR
AV DATE	NA
Uploading Date	21.04.2018
Transmission Date	21.04.2018

