

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No 105 of 2018

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Shyam Babu Yadav S/o Sri Yamuna Prasad Yadav Resident of Village - Bettiah
Mohalla - Christian Quarter, Noniyar Toli, Ward No. 7, P.S. - Bettiah Nagar,
District - West Champaran.

.... Appellant/s

Versus

Srimati Lilawati Devi W/o Late Satya Narain Prasad r/o Vill - Gola Bazar,
Khalilabad, P.S. - Khalilabad, Sant Kabir Nagar, Uttar Pradesh (U.P.).

.... Respondent/s

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Appearance :

For the Appellant/s : M/s Ashok Kr Sinha, Shyam Sundar Pandey,
Advocates

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 11-04-2018

The appeal has been filed against the order dated 23.01.2018 passed by Sub Judge VII, Bettiah in Title Suit No 185 of 2016 rejecting the plaintiff's application under Order 39, Rules 1-2 and Section 151 of the Code of Civil Procedure (for brevity, *CPC*). The Court has refused to grant temporary injunction in favour of the appellant/plaintiff.

The Title Suit has been filed by the appellant in the Court below seeking a declaration of right, title and interest over the property mentioned in Schedule I of the plaint on the basis of a registered Power of Attorney dated 25.06.2016. The Power of Attorney is claimed to have been executed by Ghanshyam Raut in



favour of the plaintiff and it is the case of the plaintiff that the name of Ghanshyam Raut is found in the *khatiyani* in respect of the suit land. The wife of Ghanshyam Raut is the defendant in the Court below. It is the case of the plaintiff that upon execution of the Power of Attorney, he has been handed over possession of the suit land and is in threat of dispossession at the hands of the defendant. In support of his prayer, the plaintiff has also filed Photostat copy of *chakbandi parcha khatiyani* and on the basis of such documents, asserts that he is in possession of the suit land.

Counsel for the appellant has also relied upon some decisions of various High Courts such as **Laxmi and Others –Versus Savanta Bapu Mali, AIR 1986 Bombay 169** and **Madan Mohan – Versus- Gauri Shankar and Another, AIR 1988 Madhya Pradesh 152** to submit that all the three ingredients for grant of temporary injunction under Order 39 Rules 1-2 of CPC need not be fulfilled before issuing an order of temporary injunction in favour of the plaintiff and that the appellant's assertion regarding possession of all suit lands on the basis of registered Power of Attorney was sufficient for the remedy of injunction in his favour as otherwise he was likely to suffer irreparable injury. He submits that the Court below has erred in rejecting the plaintiff's claim for temporary injunction by assigning the reason that the essential ingredients for grant of temporary



injunction, as contained in Order 39 of CPC has not been fulfilled. He has submitted that in terms of the said decisions cited by him, sufficient grounds have been made for grant of temporary injunction as he is in possession of the suit land on basis of said Power of Attorney. Laying emphasis on the judgment of the Andhra Pradesh High Court in the case of **Radhakrishna Murthy –Versus- K Narayanadas and Another, AIR 1982 Andhra Pradesh 384**, it is contended on behalf of the appellant that his possession on the basis of registered Power of Attorney gives a legal right to the appellant, which was sufficient for exercise of jurisdiction in favour of the appellant in the matter of grant of injunction.

The three judgments relied upon by the appellant contain undeniable propositions of law. However, the same can be applied only to the appropriate case and have no application in the instant case as the Court below, with reference to the evidence and records, has arrived at a conclusion that none of the ingredients essential for exercise of jurisdiction under Order 39 Rules 1 & 2 of the CPC in favour of the appellant was made out. Reliance has also been placed on one judgment of the Rajasthan High Court reported in the case of **Ramchandra Tanwar –Versus- M/s Ram Rakhmal Amichand and Another, AIR 1971 Rajasthan 292** which appears to have no application in the instant case.



In the instant case, the Court below, by order dated 23.01.2018, rejecting the plaintiff's prayer for grant of temporary injunction, has taken note of the fact that though the plaintiff has claimed that he was put in possession by virtue of a registered Power of Attorney issued by Ghanshayan Raut since, in view of his illness, he was not capable of looking after the suit lands. It is plaintiff's case that on 06.09.1955, the suit land had been gifted to Ghanshyam Raut by one Satya Narain Prasad. However, copy of an unregistered gift deed has been produced in support of the claim. Since, on the basis of such unregistered gift deed, the said Ghanshyam Raut is said to have acquired the suit property, therefore, claim of the plaintiff that by virtue of registered Power of Attorney issued by Ghanshyam Raut, he would acquire right, title and interest over the suit property, has prima facie not been considered to be a strong case in favour of the plaintiff so as to warrant grant of temporary injunction in favour of the plaintiff. In respect of possession also, copy of *khatian* has been placed on record by the plaintiff and further, it has been noticed by the Court below while rejecting the plaintiff's prayer for temporary injunction that no case of any irreparable loss being caused to the plaintiff so as to necessitate grant of temporary injunction in his favour has been made out. By referring to the aforesaid facts, the Court below has come to the conclusion that none of the requisite



conditions for grant of temporary injunction under Order 39 Rules 1-2 read with Section 151 of CPC has been fulfilled.

This Court finds no infirmity in the order dated 23.01.2018 passed by Sub Judge VII, Bettiah in Title Suit No 185 of 2016 rejecting the appellant’s claim for grant of temporary injunction by the Court below.

This appeal is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.04.2018
Transmission Date	NA

