

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No 661 of 2016

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Smt Mala Devi, W/o Sri Atmanand Bhagat @ Shanti Atmanand Bhagat, Resident of Mohalla- Gangjala, Ward No.18, Saharsa Municipality, P.S. & District- Saharsa (Bihar).

.... Appellant/s

Versus

Sri Raj Kumar Sahoo, S/o Late Magan Sahoo, Resident of Village- Rajpur, P.S.- Rajpur, District- Buxar (Bihar).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Dronacharya, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 19-01-2018

Heard counsel for the appellant.

2 The appeal has been filed against the order dated 11.05.2016 passed in Title Suit No 193 of 2013 whereby and whereunder the learned Court has allowed the petition filed by the plaintiff under Order 39 Rules 1 and 2 read with Sections 94 and 151 of Code of Civil Procedure and restrained the defendant (appellant herein) from selling or alienating the portion of the land mentioned in the agreement for sale.

3 Title Suit has been filed for specific performance of the agreement whereby and whereunder some lands have been agreed to be sold to the plaintiff by the defendant in respect of which Rs 15 lacs was paid to the plaintiff. The submission made on behalf of the



appellant is that even today, the appellant is willing to execute the deed in relation to 1800 square feet in favour of the plaintiff. The plaintiff's case in the Court below is that the agreement was to sell 1 *katha* of land and, therefore, the plaintiff is entitled to execution of deed with respect to 1 *katha* (1910 square feet) of land. In view of the conflicting stand, the dispute is confined to an additional 110 square feet of land in respect of which the interim order operates in favour of the plaintiff.

4 Having considered the aforesaid aspect, the Court below has come to the conclusion that how the agreement could be interpreted is a matter to be decided in the trial Court whether the plaintiff would be entitled to the additional 110 square feet of land as a consequence of the agreement to sell. Deed of agreement dated 28.01.2013 is the issue to be decided in the suit. The fact of execution of agreement to sell, and acceptance of Rs 15 lacs in lieu thereof have been acknowledged and the dispute is only to the extent as to whether the balance of Rs 15 lacs was in relation to the remaining 110 square feet of land or limited to the extent of 1800 square feet. It is the submission of the counsel for the appellant that no case has been made out, and merely on a vague assertion that the plaintiff desires to sell the land, the order has been passed. The same is not sufficient to make out a case for issuing the impugned order. Whether recording



of 1 katha of land in the agreement to sell dated 28.01.2013 was fraudulent or not is to be decided in the suit. This Court is of the opinion that the Court below has not erred by granting the interim order as balance of convenience also lies in favour of the plaintiff.

5 In view of the aforesaid facts noticed above, which have also been noticed by the Court below, this Court would, therefore, refrain from interfering with the impugned order dated 11.05.2016 passed in Title Suit No 193 of 2013 by the learned Sub Judge V, Saharsa.

6 The Miscellaneous Appeal is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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