

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.609 of 2018

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Vidyut Prabha Pandey @ Prabha Devi			Appellant/s
Versus			
Kamla Devi & Ors			Respondent/s

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Appearance :

For the Appellant/s	:	Mr. K. N. Choubey, Sr. advocate
		Mr. Jitendra Kumar Pandey, advocate
For the Respondent/s	:	Mr. Parth Gaurav, advocate
		Ms. Shambhavi Shanker, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 20-06-2018 Heard Mr. K. N. Choubey, the learned senior counsel for the petitioner, and Mr. Parth Gaurav, the learned counsel for the respondent No.1 to 6.

The petitioner has filed this Civil Misc. petition against the order dated 20.02.2018 passed by the learned Additional District Judge-IV, Kaimur at Bhabhua in Civil Misc. Appeal No. 09 of 2015/ 18 of 2016 by which the learned Additional District Judge has held, while granting injunction in favour of plaintiffs, that the judgement and decree passed in Title Suit No. 8 of 1979 shall have no effect on the right, title and interest of the plaintiffs/respondents.

The learned senior counsel for the petitioner submits that one Late Mahanand Tiwari had two sons namely, Narmadeshwar Tiwari and Shiv Kumar Tiwari @ Lallan Tiwari. Shiv Kumar Tiwari filed Title Suit No. 8 of 1979 against the legal heirs of Late Narmadeshwar Tiwari. The suit was decreed and lands of Khata No. 78 and 79 were allocated to the share of Late Shiv Kumar Tiwari @ Lallan Tiwari. The judgement and decree became final as the defendants of the aforesaid suit did not prefer any appeal. It is further submitted that the present suit, Title Suit



No. 510 of 2013, was filed by the vendors of daughters of Narmadeshwar Tiwary and they claimed that they purchased the land of Khata No. 78 and 79 from the daughters of Narmadeshwar Tiwary and their names have already been mutated. The plaintiffs filed petition under Order 39 Rule 1 & 2 of the Code of Civil Procedure for grant of injunction, restraining the defendants/ petitioner from interfering into peaceful possession of the purchased lands of Khata No. 78 and 79 which they purchased from the daughters of Narmadeshwar Tiwary. The learned Sub-Judge rejected the injunction petition holding that the defendants by virtue of judgement and decree passed in Title Suit No. 8 of 1979 got the lands of Khata No. 78 and 79 and, therefore, if the aforesaid lands were sold in favour of plaintiffs, unless the judgement and decree passed in Title Suit No. 8 of 1979 is set aside, the plaintiffs have not got any prima facie case. When the plaintiffs/ appellants filed Civil Misc. Appeal No. 09 of 2015, the learned Additional District Judge held that since the consolidation proceeding was going on the judgement and decree passed in Title Suit No. 8 of 1979 has got no bearing and the plaintiffs/ respondents have got prima facie case for grant of injunction. It is submitted that the order passed by learned Additional District Judge is perverse in view of the fact that the judgement and decree passed in Title Suit No. 8 of 1979, in which the vendors of respondents were party, became final and they did not prefer any appeal and in view of aforesaid judgement and decree lands of Khata No. 78 and 79 were allocated in the share of Shiv Kumar Tiwary, father of the petitioner.

On the contrary, the learned counsels for respondent No. 1 to 6 has submitted that the learned Additional District Judge



has given direction to the court below to dispose of the suit within three months, therefore, this court in its supervisory jurisdiction should not interfere into the order passed by the appellate court.

I do not find any force in the submission of learned counsel for respondent No. 1 to 6. On the face of the order passed by the learned Additional District Judge, I find that the learned Additional District Judge has recorded erroneous finding that the judgement and decree passed in Title Suit No. 8 of 1979 is not binding on the vendors of defendants of the suit since the Consolidation proceeding was going on. There was nothing on record to show that the defendants of the Title Suit No. 8 of 1979 filed any appeal for setting aside the judgement and decree passed in Title Suit No. 8 of 1979 by which the entire lands of Khata No. 78 and 79 fell in the share of Shiv Kumar Tiwary.

Accordingly, I find that the impugned order dated 20.02.2018 passed in Civil Misc. Appeal No. 09 of 2015 is not sustainable and the same is set aside. This Civil Misc. petition is allowed.

However, both the parties have very fairly agreed not to alienate the suit property by any way during the pendency of the suit filed by the respondents. Thus, it is ordered that both sides shall not alienate the suit property during the pendency of suit. The learned court below shall make all efforts to dispose of the suit, within six months.

(Prabhat Kumar Jha, J)

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