

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12851 of 2014

IN

C.R. 139 of 2012

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1, Shahid Mian, son of Kitab Mian &

2. Ilakat Mian, son of Kitab Mian, both residents of village-Bhaluhi, Police Station-Manjhaulia, Post Office-Dhokraha, Bettiah

.... Petitioner/s-Defendant Ist Party Respondent
Versus

1. Aasin Mian, son of Rahim Mian, resident of village-Bhaluhi, Police Station-Manjhaulia, Post Office-Dhokraha, Bettiah, West Champaran

.... Respondent/s-Defendant 2nd party Respondent

2. Md. Kashim Mian,

3. Absen Mian

4. Mustafa Mian, all sons of Late Nazir Mian, all residents of village-Bhaluhi, Police Station-Manjhaulia, Post Office-Dhokraha, Bettiah, West Champaran.

..... ...Respondent-Plaintiffs-Appellants.

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Appearance :

For the Petitioner/s : Mr. Shyam Sunder Pandey, Advocate

Mr. Ashok Kumar Sinha, Advocate

For the Respondent/s : Mr. Anil Chandra & Amit Kumar, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-07-2018

The petitioner before this Court is defendants in Title Suit No.134 of 2009 pending in the court of Munsif, Bettiah, West Champaran. They have filed this application for setting aside the order dated 07.05.2012 passed by Ist Additional District Judge, Bettiah in Miscellaneous Appeal No.26 of 2011 whereunder the learned appellate Court set aside the order dated 09.03.2011 passed by Munsif and allowed the appeal and the petitioners were directed not to interfere in any form over the land described in schedule-2 of the plaint till the disposal of the suit. The learned trial Court was further directed to dispose of the suit within six months from the date of receipt/production of the order.

2. Heard learned counsel for the petitioners and the respondents.

3. As per admitted case of both the parties, the suit land originally



belonged to Asin Mian and Nazir Mian both grand sons of Ali Hussain Mian. The said Ali Hussain Mian had executed a deed of gift on 30.09.1977 in favour of Asin Mian and Nazir Mian. According to case of plaintiffs, the said Nazir Mian having half share sold 4 kathas 15 dhurs land to Ranjan Kumar, Son of Madan Prasad Kushwaha by virtue of registered sale deed dated 16.09.1991. The said Madan Prasad subsequently sold the said land to the plaintiffs on 26.09.1991 and put them in possession over the same. The plaintiffs got their name mutated and paid rent to the State of Bihar. The said Nazir Mian was left with no land in the said plot after execution of sale deed in favour of Ranjan Kumar and so the sale deed executed by him on 10.09.1977 in favour of defendant is illegal, fraudulent ineffective and not binding on the plaintiffs.

4. The defendants on the other hand claimed title through his vendor namely, Asin Mian and Nazir Mian who sold 4 kathas 15 dhurs land in their favour by virtue of registered sale deed dated 10.09.1997. The plaintiffs filed a petition before court below praying therein to injunct the defendants from causing any interference in their possession which after hearing was rejected. The moot question for determination in this case is to decide the title of the parties. The plaintiffs claimed title through their vendor who had acquired the land by virtue of registered sale deed dated 16.09.1991. According to the defendants, the said documents is a fake transaction and it never acted upon. The defendants claim to have purchased the said land from Md. Nazir Mian and Asin Mian which was executed on 10.09.1997, i.e., after six years of the document executed in favour of the plaintiffs. In this view of the matter, the learned appellate court has rightly observed that the plaintiffs have prima-facie case and balance of convenience lies in their favour. The learned Additional District Judge while allowing the appeal has directed the petitioner not to interfere in any form on the dispute land



described in schedule-2 of the plaint till the disposal of the suit and further directed the trial court to dispose of the suit within six months.

5. In view of above discussions, I find no merit in this writ application and is accordingly dismissed. The court below however will decide the suit without being prejudiced by the observation of this court as well as the learned appellate court.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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