

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5381 of 2016

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1. Most. Anju Devi @ Kumari Priya wife of Late Ajit Kumar
 2. Abhijit Kumar @ Rocky, Son of Late Ajit Kumar
 3. Abhishek Kumar @ Chandan Kumar son of Late Ajit Kumar,
All residents of village- Jakhaur, P.s.- Ariari, District-
Sheikhpura.

... .. Petitioner/s

Versus

1. Ashok Kumar son of Late Mahaveer Mahto
2. Smt. Sunita Devi wife of Ashok Kumar, Both residents of Village Jakhaur,
P.S. Ariari, District- Sheikhpura, at present residing in front of Sadar Hospital,
Sheikhpura, P.O. & District- Sheikhpura.

... .. Respondent/s

Appearance :

For the Petitioner/s : M/s Abhishek Anand and Jitendra Kr. Verma, Advs.
For the Respondent/s : Mr. Ranjeet Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

10 06-12-2018

I.A. No. 1037 of 2018

This interlocutory application has been filed by the respondent nos. 1 and 2 for vacating the stay order passed by this Court on 25th July 2016. Heard both sides on the point of admission as well as the interlocutory application.

This writ application has been filed by the plaintiffs of Title Suit No. 95 of 2013 pending in the court of Sub-Judge-I, Sheikhpura for setting the order passed by the District Judge, Sheikhpura in Civil Miscellaneous Appeal No. 4 of 2014. The learned appellant court allowed the said appeal and set aside the order dated 13.01.2014 passed by Sub-Judge-I, Sheikhpura.

Heard learned counsels for the petitioners and the



respondents.

Petitioners have filed the aforesaid Title Suit No. 95 of 2013 against the respondents for declaration of registered deed of gift dated 13.05.1998 as forged, fabricated, fraudulent and void. The plaintiffs further claimed half share in the suit property and sought relief to injunct the defendants from causing any interference over the suit land. These petitioners filed an injunction petition before the court of Sub-Judge-I who after hearing both the parties, injuncted the defendants from constructing any house or tower or from executing any document till the disposal of injunction matter. The defendants filed Miscellaneous Appeal No. 94 of 2014 against injunction order on the file of District Judge who after hearing both sides allowed the said miscellaneous appeal and after setting aside the order dated 13.01.2014. The appellant court directed the trial court to pass appropriate order in the light of direction given by him and to expedite the trial preferably within three months. The plaintiffs being aggrieved by the said order have filed this writ application.

After hearing both sides and on going through the documents on record, I find that the husband of petitioner no. 1 and defendant no. 1 were full brothers. After the death of



husband, petitioner no. 1 along with her two sons filed the aforesaid suit for declaration with respect to a registered deed of gift which was executed by the mother of her husband in favour of the defendant no. 1. According to plaintiffs, the land covered by deed of gift was acquired by the father of her husband Mahaveer Mahto from the income of joint family property in the name of his wife Chandrawati Devi. The said Chandrawati Devi had no source of income to acquire the said land. The defendants fraudulently brought into existence a registered deed of gift dated 13.05.1998 by impersonating a fictitious lady as Chandrawati Devi. The mother of defendant no. 1 had no right to execute deed of gift with respect to the joint family property. The deed of gift was executed on 13.05.1998, however the plaintiffs filed the suit for declaration after 15 years. Besides that the said Chandrawati Devi admittedly died leaving behind the husband of plaintiff no. 1, defendant no. 1 and seven daughters. Out of them, daughters are not party to the suit.

It has been submitted by the learned counsel for the petitioners that the daughters have denied their share in the suit property and so they were not impleaded as party to the suit. If the plaintiffs succeed in proving the disputed property as joint family property and the deed of gift is declared void and



ineffective in that event, the plaintiffs would not be entitled to half share as asserted by the plaintiffs. The plaintiffs have prayed to appoint a Survey Knowing Pleader Commissioner for carving out half share and further to put them in possession over the said patti. This averment shows that the plaintiffs are not in exclusive possession over the entire suit land. The learned appellant court considering all these facts has rightly set aside the order of learned trial court and directed to pass appropriate order.

In view of above facts, I find that the impugned order does not suffer any illegality requiring any interference. This application being devoid of merit is accordingly dismissed. It is however made clear that the above observation will not prejudice the trial court in any manner while deciding the suit on merit.

(Sanjay Kumar, J)

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