

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1357 of 2016**

1. Smt. Bina Devi wife of Sanjay Kumar Pandey resident of Village- Laxmipur, Police Station- Bhairavganj, District- West Champaran.
2. Aditya Saurabh son of Late Ravi Kumar Motani
3. Madhu Motani @ Madhu Devi wife of Late Ravi Kumar Motani
4. Prachi Agrawal Daughter of Late Ravi Kumar Motani All residents of Mohalla- Lal Bazar Bettiah, Post Office/Police Station- Bettiah Town, District- West Champaran.

... .. Petitioners/Respondents/Plaintiffs
Versus

1. Kanhaiya Sharma son of Late Harinandan Sharma resident of Village- Sansaraiya, Police Station- Bettiah Mufasil, District- West Champaran at present Christian quarter, Police Station/Post Office- Bettiah, District- West Champaran.

... ..Respondent First Set/Appellant/Defendant First Set

2. Edward Remi Shah son of Late Jawalin Shah resident of Mohalla- Christian quarter, Police Station/Post Office- Bettiah at present resident of Marmo Colony, Police Station- Argora, District- Ranchi, Jharkhand.

... .. Respondent Second Set/Respondent/Defendant Second Set

Appearance :

For the Appellant/s : Mr. Shiv Kumar Dwivedy
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT**

Date : 25-10-2018

Heard the learned counsel for the petitioners and the respondent no.1. Nobody appears on behalf of respondent no.2.

2. The petitioners filed this civil miscellaneous petition against the order dated 19.09.2016, passed by the learned District Judge, Bettiah, West Champaran in Miscellaneous Appeal No.7 of 2015 whereby and whereunder the learned District Judge set aside the order dated 09.04.2015, passed by the learned Sub-Judge-III, Bettiah, West Champaran in Title Suit No.73 of 2012 granting



injunction in favour of the plaintiffs-petitioners restraining the respondent no.1 from making any construction over the suit land.

3. The plaintiffs filed the suit against respondent-1st set and the respondent-2nd set for declaration of title and recovery of possession of the suit premises from possession of the respondent-1st set. The plaintiffs-petitioners purchased the land from defendant-2nd set through two sale deeds dated 21.05.2010 on payment of full consideration amount and the defendant-1st set did not get any title over the land measuring 7 Dhurs 19 Dhurkis of Plot No.25/1/1 and Plot No.25/2/2 measuring 7 Dhurs 19 Dhurkis of Khata No.89, situated at Kamal Nath Nagar, Ujjain Tola, Bettiah, West Champaran. The petitioners-plaintiffs visited the suit premises on 12.03.2011 and they found a hut standing on the suit land. On enquiry the petitioners-plaintiffs came to know that the defendant-1st set illegally occupied the suit premises and had collected building materials for construction of building. The petitioners filed petition for grant of injunction restraining the defendants. The defendant-1st set appeared in the suit and stated that he had negotiation for purchase of the suit land from the maternal uncle of defendant-2nd set and paid Rs.80,000/- through bank draft to the defendant-2nd set but later on the sale deed was not executed. The defendant-1st set was put in possession of the land on the basis of such oral agreement to sell. The learned Sub-Judge after hearing both sides allowed the petition of the



plaintiffs filed under Order XXXIX Rule 1 & 2 of the CPC and restrained the defendant-1st set from making any construction over the suit land during the pendency of the suit. The respondent-1st set filed Miscellaneous Appeal No.7 of 2015 against the order dated 09.04.2015, passed by the learned Sub-Judge in Title Suit No.73 of 2012 and the learned District Judge after hearing both sides set aside the order of the learned Sub-Judge holding that the defendant-1st set was in permissive possession by virtue of oral agreement to sell and set aside the order restraining the defendant-1st set from constructing any construction over the land.

4. The learned counsel for the petitioners submits that the petitioners purchased the land from the real owner of the land, defendant-2nd set. The defendant-1st set was not in possession of the land. Defendant-1st set filed FIR against defendant-2nd set making allegation that they took money for execution of the sale deed but they did not execute the sale deed. This fact has also been stated in para 19 of the WS filed by the respondent-1st set. It is further submitted that the learned Sub-Judge has rightly restrained the defendant-1st set from making any construction over the suit land as the defendant has got no title and he is trespasser. The defendant however, has got right to recover money, if paid to the defendant-2nd set, that too between 2001 to 2004. Even after payment of part consideration money, the sale deed was not executed for many years.



The petitioners had no knowledge about the fact that the defendant-2nd set had entered into any agreement with the defendant-1st set and purchased the land through two sale deeds after payment of entire consideration amount. The defendant-1st set has got no title but the learned District Judge has illegally set aside the order of the learned Sub-Judge restraining the defendant-1st set from making construction over the land.

5. The learned counsel for the respondent-1st set submits that the respondent-1st set is in permissive possession of the land and the order does not require any interference.

6. It is admitted that the petitioners purchased the land from the respondent-2nd set on 21.05.2010 by two registered sale deeds executed by defendant-2nd set but the defendant-1st set put some hut on the land purchased by the plaintiffs and thereafter the plaintiffs filed the suit for declaration of title and for recovery of possession. The defendant-1st set himself stated in the WS that he paid part consideration amount in pursuance of an oral agreement to purchase the land. The part consideration amount was paid between 2001 to 2004 but the defendant-1st set did not take any action for more than six years and when the petitioners purchased the land from the defendant-2nd set, defendant-1st set made interference and illegally occupied the suit land necessitating the plaintiffs to file the suit for declaration of title and recovery of possession. By virtue of



such possession that too on the basis of payment of some money between 2001 to 2004, the defendant-1st set cannot be allowed to change the nature of the suit and make construction thereon, therefore, I find that the learned District Judge has committed jurisdictional error and material illegality in setting aside the order of the learned Sub-Judge granting injunction restraining the defendant-1st set from making any construction over the suit land and the order is not sustainable. Accordingly, the order dated 19.09.2016, passed in Miscellaneous Appeal No.7 of 2015 by the District Judge, Bettiah, West Champaran is set aside and the respondent no.1 is restrained from making any construction over the suit land.

7. The civil miscellaneous petition is accordingly allowed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.10.2018
Transmission Date	NA

