

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.430 of 2019

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Arun Prasad son of Late Bhimshen Prasad permanent resident of Pir Baba Road, Ara, P.S. Ara Nawada, District- Bhojpur, presently residing at Mohalla- Maula Bagh, Ara, P.S. Ara Nawada, District Bhojpur.

... ..Defendant/Petitioner

Versus

1. Meena Kumari Devi wife of Late Bhimshen Prasad resident of Mohalla- Pir Baba Road, P.S. Ara Nawada, District- Bhojpur.
2. Chandan Prasad son of Late Bhimshen Prasad resident of Mohalla- Pir Baba Road, near D.M. Kothi, P.S. Ara Nawada, District- Bhojpur.
3. Shankar Prasad son of Late Bhimshen Prasad resident of Mohalla- Pir Baba Road, near D.M. Kothi, P.S. Ara Nawada, District- Bhojpur.

... ..Plaintiffs/Respondents

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Appearance :

For the petitioner : Mr.Navin Kumar Sinha, Advocate
For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 18-07-2019

This application under Article 227 of the Constitution of India has been filed by the defendant/petitioner for setting aside the order dated 31.01.2019 passed by the 3rd Additional District & Session Judge, Bhojpur at Ara in Civil Misc. Appeal No. 11 of 2018 affirming the order dated 09.05.2018 passed by learned Sub-Judge-VI, Bhojpur, Ara in Title Suit No. 193 of 2017 whereby the application preferred by the respondents under Order 39, Rule 1 and 2 has been allowed and both the parties have been directed to maintain status quo.



2. Learned counsel appearing for the petitioner submitted that the order impugned passed by the court below is erroneous. There was no material before it on the basis of which the application filed by the plaintiffs could have been allowed. The essential ingredients of Order 39, Rule 1 and 2 were completely wanting in the instant case.

3. Having heard the petitioner and perused the application and the order impugned, I find that the respondents have filed Title Suit No. 193 of 2017 for partition of the property in question. The petitioner is contesting the suit. According to him, partition had already been taken place earlier and parties are in possession of their respective shares. Hence, no partition is required further.

4. During pendency of the suit, an application under Order 39, Rule 1 and 2 was filed by the respondents claiming therein that during the pendency of the suit, the petitioner is trying to sell certain part of the property in question. They pleaded that the petitioner is changing the structure of the property and is proceeding with some constructions, which would be detrimental to the interest of plaintiffs.



5. The petitioner contested the application for injunction. He has stated that the respondents have no share in the property.

6. However, after obtaining advocate commissioner's report and hearing the parties, learned Sub-Judge found that the plaintiffs have a prima facie case and balance of convenience lies in their favour and having come to these findings, he has passed the order of status quo, which was challenged in appeal by the petitioner, but the appellate court, after perusing the materials on record, found no error in the order passed by the learned Sub-Judge and, thus, affirmed the order passed by the trial court and dismissed the miscellaneous appeal filed by the petitioner.

7. Having regard to the materials on record, I am of the opinion that the order impugned passed by the court below does not suffer from jurisdictional error. There is also no perversity in the order as rival claims were considered and, by a reasoned order, the application of the respondents filed under Order 39, Rule 1 and 2 has been disposed of.

8. It is settled position in law that in an appeal against the exercise of discretionary jurisdiction, the legality and validity of the order is examined and it can be set aside only when



there is patent error on the face of the record or the order is against the principles of law. If two views are possible and a view, which is reasonable and logical, has been adopted by the trial court, the other view, howsoever be sound, would not be allowed to be substituted in place of trial court's views.

9. An order of status quo is a discretionary relief pending adjudication. An appellate court is not supposed to interfere with the exercise of discretion if conclusion reached by the trial court is reasonably possible.

10. The trial court on a careful consideration of the evidence came to a definite conclusion keeping in mind the golden principles governing grant of injunction. The appellate court has also not come to a different conclusion.

11. Hence, there is no occasion for this Court while exercising jurisdiction under Article 227 of the Constitution of India to have a different view of the matter.

12. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.07.2019
Transmission Date	NA

