

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.113 of 2019

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Sudha Singh W/o Late Ashok Kumar Singh Res. of Mission House, Mission Compound under ward no. 30 of Saharsa Nagar Parishad, P.S. Saharsa, Distt. - Saharsa.

... .. Appellant/s

Versus

1. Nelam Singh @ Nelam Shah and ors D/o Late Tarkeshwar Prasad Singh W/o Dinesh Peter Shah, Res. of In front of gate no. 93, behind Shah Arcade, Sunshine School, Digha, P.S. Digha, Distt.- Patna.
2. Prashant Kumar Singh S/o Late Tarkeshwar Prasad Singh Res. of Vill.- Rakia, P.S.- Bihra, Distt.- Saharsa and Presently residing at Mission House, Mission compound, ward no. 30 of Saharsa Nagar Parishad, P.S. Saharsa, Distt. - Saharsa.
3. Sidharth Kumar Singh S/o Prashant Kumar Singh Res. of Vill.- Rakia, P.S.- Bihra, Distt.- Saharsa and Presently residing at Mission House, Mission compound, ward no. 30 of Saharsa Nagar Parishad, P.S. Saharsa, Distt. - Saharsa.
4. Aditya Kumar Singh Prashant Kumar Singh Res. of Vill.- Rakia, P.S.- Bihra, Distt.- Saharsa and Presently residing at Mission House, Mission compound, ward no. 30 of Saharsa Nagar Parishad, P.S. Saharsa, Distt. - Saharsa.
5. Manorma Singh @ Manorma Devi W/o Late Tarkeshwar Prasad Singh Res. of Vill.- Rakia, P.S.- Bihara, Distt.- Saharsa and Presently residing at Mission House, Mission compound, ward no. 30 of Saharsa Nagar Parishad, P.S. Saharsa, Distt. - Saharsa.
6. Usha Singh Kushwaha D/o Late Tarkeshwar prasad Singh W/o Alkshendra Pal Singh Kushwaha, res. of vill.-/mohalla Urai, Station road, P.S.- Urai, Distt. - Jalaun (Uttar Pradesh).
7. Ita Singh Kushwaha D/o Late Tarkeshwar Prasad Singh W/o Krishnendra Pal Singh Kushwaha, Res. of Vill. / Mohalla High 4, Chandra Vihar, Vikash Nagar, P.S. Kanpur, Distt. - Kanpur (Uttar Pradesh).

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. P.N. Shahi, Sr. Adv.
	:	Mr. Arun Kumar, Adv.
	:	Mr. Rajesh Ranjan, Adv.
For the Respondent/s	:	Mr. Lala Sachinder Kumar, Adv
	:	Mr. Ashok Kumar Sinha No.2, Adv.
	:	Mr. Rakesh Kumar Singh, Adv.



CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 15-07-2019

Heard the parties.

2. This appeal has been filed for setting aside order dated 01.02.2019 passed in Title Suit No. 464/2016 passed by learned Sub-Judge, Saharsa by which he has allowed petition for grant of injunction filed on behalf of plaintiff/respondent No.1 restraining the parties from executing any sale deed or alienating any part of suit property or to change the nature of suit property or to make any structure over the suit land till disposal of partition suit.

3. Plaintiff has filed Title Partition Suit No. 464/2003 for her 1/6th share in the suit property detailed in schedule- I to schedule-IV of the plaint.

4. Plaintiff's case as set out in the plaint is that plaintiff and defendant are members of joint Hindu family and are having joint title and possession over the suit land in which plaintiff has 1/6th share.

5. Vishwanath Prasad Singh was the common ancestor who died leaving behind his three sons Balbhadar Narayan Singh, Kameshwar Pd. Singh, and Tarkeshwar Pd. Singh, who succeeded to his property jointly and were having joint title and



possession over the ancestral property.

6. A partition suit being Title Suit No. 39/76/22/85 was filed among Balbhadar Narayan Singh, Kameshwar Pd. Singh and Tarkeshwar Pd. Singh which was disposed of by a compromise decree and properties allotted to Tarkeshwar Pd. Singh in said partition suit is detailed in schedule- I of the plaint of present partition suit. Tarkeshwar Singh was a mining Engineer and subsequently acquired many properties from his personal income in his own name and in the name of his sons which are detailed in schedule-II, III and IV of the plaint.

7. Tarkeshwar Prasad Singh died on 12.09.2013 leaving behind his wife Manorma Singh (defendant), three daughters Usha Singh Kushwaha (defendant), Ita Singh Kushwaha (defendant) and Neelam Singh @ Neelam Sah (plaintiff) and one son Prashant Kumar Singh and daughter-in-law Sudha Singh (defendant No.7) widow of Ashok Kumar Singh who had pre-deceased his father and had died on 29.08.2013.

8. Plaintiff is married daughter of Late Tarkeshwar Prasad Singh who has filed this suit for partition claiming 1/6th share in the joint family property as detailed in schedule-I, II, III and IV of the plaint.

9. Plaintiff thereafter filed a petition under Order 39



Rule 1 and 2 for grant of temporary injunction with respect to suit land stating therein that schedule-I property was given to father of plaintiff in a compromise decree in Title Suit No. 39/1976/22/1985 and schedule II, III and IV properties were the exclusive properties acquired by the father of the plaintiff.

10. Plaintiff in her injunction petition has stated that defendant No. 4 (mother of plaintiff) is alienating the suit property and defendant No. 7 Sudha Singh (widow of her brother Ashok Kumar Singh) has also entered into agreement to alienate schedule-IV property, as such, they may be restrained from such alienation during pendency of suit.

11. Rejoinder to said injunction petition was filed on behalf of defendant No. 7/petitioner in which she has stated that schedule-IV property of the plaintiff exclusively belonged to Ashok Kumar Singh her late husband which was throughout in their possession and same was acquired by Ashok Kumar Singh from his own income and was his exclusive property and after his death, petitioner came in possession and continuing thereafter. Schedule-IV property was purchased by a registered sale deed dated 28.02.2006, dated 10.03.2006 measuring 10 Kathas, 14 dhors and also by registered gift deed dated 16.06.2008 executed by Tarkeshwar Pd. Singh (father of Ashok



Kumar Singh) in favour of Ashok Kumar Singh and same was mutated and Jamabandi was running in the name of Ashok Kumar Singh for which rent was paid and rent receipts granted and after death of her husband Ashok Kumar Singh, schedule-IV land is mutated in the name of petitioner/defendant No. 7 and she is paying rent and current rent receipts are being granted to her. It has been further stated that plaintiff has seized to be a Hindu as she married a christian in the church and is disqualified to inherit/succeed to the joint family property.

12. It has been further submitted in the rejoinder filed by petitioner that for the lands as described in schedule-IV Manorma Singh (mother of the plaintiff) has filed a partition suit being title Suit No. 307/2016 claiming said property to be the self acquired property of his deceased son Ashok Kumar Singh and after his death she being a class-I heir is also entitled for share in said schedule-IV property which is still pending.

13. Manorama Singh plaintiff of said partition suit had filed an injunction petition to grant injunction against alienation of schedule-IV property in which show cause was filed by petitioner and learned trial court after hearing both the parties by its order dated 04.05.2018 rejected the injunction petition and thereafter present partition suit has been filed by her married



daughter in which her injunction petition was allowed which has been impugned in this appeal.

14. It has been further stated that said Manorama Singh sold lands worth Rs. 25 lacs and gave the sale proceeds to her grandsons who are sons of Prashant Kumar Singh. In Title Partition Suit No. 307 of 2016 Manorama Singh has accepted that schedule-IV properties were purchased by Ashok Kumar Singh upon which he was in possession and after his death as per Hindu Succession Act the properties devolved upon his widow (Sudha Singh) and his mother (Manorama Singh).

15. Defendant No. 2 and defendant No. 4 have supported the claim of plaintiff as well as petition for grant of injunction. In her rejoinder defendant No.7/Petitioner had only opposed the grant of injunction over schedule-IV land as same was the exclusive property purchased by her late husband from his own income in the year 2006 and also by a gift deed dated 16.06.2008 by his father Tarkeshwar Pd. Singh as such is not a joint family property liable for any partition.

16. Defendant No. 4 (mother of plaintiff) in her partition suit No. 307/16 has admitted that schedule-IV land is the exclusive property of her late son Ashok Kumar Singh and after his death same devolved upon her and widow, as such it cannot



be a joint family property and plaintiff being a married daughter has notional title and possession over the joint family property in which she is claiming 1/6th share, as such, she cannot suffer any irreparable injury by not granting injunction over schedule-IV property whereas petitioner/defendant No. 7 is a widow of her deceased brother and during life time his brother was in possession over the property and after his death petitioner came in possession over schedule-IV land and same being mutated in her name as such, there is neither any prima facie case in favour of plaintiff nor balance of convenience leans in her favour nor she will suffer any irreparable injury due to non-grant of injunction over schedule-IV property

17. After hearing the parties and considering the material placed on record and perusing the order dated 01.02.2019 passed by the trial court, the grant of injunction as far as same relates to schedule-IV of the property of the plaint is set aside, however, as there is no opposition to grant of injunction over suit property as detailed in schedule-I, II and III of the plaint order passed by trial court requires no interference.

18. In case of necessity, the defendant No. 7/petitioner shall obtain the permission of the trial court before making any alienation/change in the nature of schedule-IV property.



19. This miscellaneous appeal is allowed to the extent
as indicated above.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10.09.2019
Transmission Date	N.A.

