

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.743 of 2008

- 1) Dr. Rita Sharma, wife of Dr. D. K. Sharma, resident of Karman Tola, Police Station- Arrah Nawadah, District-Bhojpur
- 2) Smt. Dr. Shukla Mahanty, wife of Rathindra Nath Mahanty, Principal Women's College Bistupur, Jamshedpur

...Plaintiffs... Appellant/s

Versus

- 1) Radheshyam Singh, son of late Sarb Narayan Singh
- 2) Smt. Vijayamala Devi, wife of Radheshyam Singh
- 3) Janmejaya Singh
- 4) Jaswant Singh, Both sons of Radheshyam Singh,
All residents of Mohalla-Karman Tola, Police Station-Arrah Nawadah,
District-Bhojpur

Intervener Defendants 5th Set
respondent 1st Set

- 5) Dr. Pushpa Rani Mehra alias Dr. P. Mehra, wife of late Kapildeo Singh at present residing at 207/C Officers Colony, Eastern Railway Kaizer Street Sealdah, Kolkata

Defendant 1st Set
Respondent 2nd set

- 6) Dr. Sikha Singh, wife of Subhas Saha, residing at 207/C Officers Colony, Eastern Railway Kaizer Street Sealdah, Kolkata

Defendant 2nd Set
Respondent 3rd Set

- 7) Dr. Suma Tangeri, wife of Dr. Tarsim Lal Tangari, residing at Puhinui road, Papatoe, Auckland, New Zealand

Defendant 3rd Set
Respondent 4th Set

- 8) Dr. Vinod Kumar, son of not mentioned, residing in front of Moti Mahal, Rajendra Nagar, Arrah

- 9) Dr. Madhubala Sinha, wife of Dr. Ravindra Kumar Sinha, resident of Mahabir Tola, Arrah, behind of Patho Care Laboratory Mahabir Tola, Arrah

Defendant 4th Set
Respondent 5th Set

Appearance :

For the Appellant/s : Mr. Jayanta Ray Chaudhary, Advocate
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 01-05-2019

Heard.

2. The present appeal has been filed for setting



aside the order dated 25.11.2008 passed by learned Sub Judge-II, Bhojpur, Ara in Title Suit No.369/06 by which prayer on behalf of the appellants for grant of injunction has been refused.

3. Plaintiff/appellant had filed a suit that her father Kapil Deo Singh purchased the suit land as described in Schedule-A by registered sale deed dated 15.04.1966 from his own fund in the name of his wife, Dr. Pushpa Rani Mehra and came in possession and constructed house and resided with his family.

4. His daughters were educated and married from the said house. Kapil Deo Singh was in Railway Service and he had landed properties in West Bengal and apart from it, he was having business and had income and saving from said business.

5. Plaintiffs are the daughters of the Kapil Deo Singh. Defendant no.1 is mother who is residing with defendant no.2 in Sealdah. It is alleged that defendant no.2 withdrew huge amount kept by defendant no.1 and defendant no.2 planned to grab the entire schedule A property which stands in the name of defendant no.1 who is under complete control of defendant no.2. Defendant no.2 came and took away valuable documents from the house of the plaintiffs and, thereafter, defendant nos.4 to 6 came on 25.08.2006 and asked the plaintiff to vacate the



Schedule A property on the ground that they have purchased Schedule A property from defendant no.1.

6. It has been submitted on behalf of the plaintiffs that after death of their father, they have also share in the property which was purchased by their father in the name of their mother (defendant no.1). Schedule A property was, thereafter, sold by defendant no.1 in favour of Radhey Shyam Singh and they are being forcibly dispossessed from the suit land.

7. A petition was filed on behalf of the plaintiffs under order 39 Rule 1, 2 for grant of temporary injunction against the forceful dispossession at the hands of defendants and it has been further submitted that they have *prima facie* case and balance of convenience leans in their favour and they will suffer irreparable loss if injunction is not granted.

8. In their show cause filed by the defendant no. 1, it has been stated that father of the plaintiffs had no source of income and the property stands in the name of defendant no.1 and she has every right to deal with property as per their choice and will. Father of plaintiff and husband of defendant no. 1 died while living with defendant no. 1 in Sealdah. The property was sold by her after receiving consideration as such no injunction



can be granted and the case is also barred by Benami Transaction Prohibition Act. The trial Court has found that on 04.01.2007 Pleader Commissioner submitted its report of local inspection and found that Dr. Nehra was a reputed surgeon and on consideration of the material facts available on record did not find prima facie case in favour of the plaintiffs and rejected the injunction petition filed on behalf of the plaintiffs/petitioners.

9. Plaintiffs have claimed that they also have share in the suit property as same was purchased by their father from his own fund in the name of his wife (defendant no.1) although it has come in the Pleader Commissioner's report that defendant no. 1 was a leading surgeon and she had enough income to purchase the suit property and it was her self acquired and exclusive property.

10. Even assuming the case of plaintiffs to be true as pleaded and property was purchased by their father in name of his wife even then it will be presumed that said property was purchased by husband for benefit of his wife and it will remain exclusive property of widow (defendant no. 1) and not a joint property. She is free to deal with property in manner she likes and she cannot be enjoined or restrained in dealing with property which stands in her name and is her personal property.



11. Plaintiffs are married daughters of deceased Kapil Deo Singh and widow Dr. Pushpa Rani Mehra (defendant no. 1) and cannot claim any right and share in suit property and as such the trial court has rightly held that no *prima facie* case is made out by the plaintiffs for grant of injunction.

12. This Court does not find any error or illegality in the order rejecting the injunction petition filed by the plaintiffs/petitioners.

13. Accordingly, this miscellaneous appeal is dismissed. However, dismissal of this miscellaneous appeal is subject to final outcome of the title suit filed by plaintiffs.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2019
Transmission Date	NA

