

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.427 of 2014

1. Sri Shatrughan Sahani, Son of Late Deonandan Sahani Resident of Village Gosaipur Gengraha, Tole Malahtoli, P.O. Kharhar, P.S. Minapur, District- Muzaffarpur
 2. Smt. Sanju Devi W/o Deep Narayan Prasad
 3. Sri Nadipat Prasad, Son of Late Kaleshwar Pd.
 4. Smt. Sikli Devi, W/o Kapildeo Prasad
 5. Smt. Sita Devi, W/o Poshan Prasad
 6. Rajesh Prasad, Son of Ram Briksha Prasad
- All are residents of Village Majlish Prannath alias Kharhar, P.O. Kharhar, P.S. Minapur, District Muzaffarpur.

... Defendants ... Appellant/s

Versus

1. Ram Murti Prasad Thakur, Son of Late Brijnandan Thakur resident of Village Rasulpur Adhar, P.O. Bishunduttpur, PS Kajra, District- Muzaffarpur.
2. Lakhindra Sahni, S/O Deonandan Sahni, resident of village Tengaraha Tole Malah Toli, P.O. Kharhar, P.S. Minapur, District, Muzaffarpur

... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Keshav Srivastava, Sr. Advocate Mr. Arun Kumar Prasad, Advocate
For the Respondent/s	:	Mr. Abhimanyu Vatsa, Ms. Priti Jaiswal, Advocates

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 06-08-2019

Heard parties.

2. This miscellaneous appeal has been filed on behalf of the defendants / appellants for setting aside the order dated 25.06.2014 passed by Sub-Judge-VIII, Muzaffarpur in Title Suit No.403 /2008 by which learned sub-judge has allowed injunction petition filed on behalf of plaintiff/ respondent.

3. Plaintiff had filed title suit for declaration that sale deeds dated 14.1.2008, 22.2.2008, and 16.5.2008 executed by



defendant no.6 in favour of defendant nos.1 to 3 with respect to lands as detailed in schedule I to III of the plaint and another sale deeds dated 21.4.2008 executed by defendant nos.1 and 2 in favour of defendant nos.4 and 5 in respect to Schedule IV and V are void, illegal and not binding on plaintiff.

4. Injunction petition dated 24.2.2009 was filed by plaintiff to restrain the defendant nos.2 to 5 from alienating or causing any damage or changing the physical feature of suit land as detailed in Schedule III to V of the plaint. The injunction petition filed on behalf of plaintiff was rejected by the trial court by its order dated 14.7.2010 on the ground that there was previous partition between plaintiff and his brother/ deceased defendant no.6.

5. Earlier against the order of refusal for grant of injunction, miscellaneous appeal no.836 /2010 was preferred which was disposed of by order dated 11.4.2014 giving liberty to plaintiff to file another injunction petition if such occasion arises in future and thereafter the second injunction petition was filed on 5.5.2014 on identical grounds. In their reply to said injunction petition, defendants denied that they are intending to alienate the suit land or making any construction or in any manner changing the physical feature of the suit land.



6. Plaintiff in their injunction petition stated that defendants are raising boundary wall on plot nos.975 and 966 and have also taken away 22 trees after cutting them for which plaintiff lodged an FIR but police in collusion with defendants submitted final form against them. Defendants are also plucking *litchi* from his orchard. Defendant nos.2 to 5 are contemplating to alienate the suit land against which they have taken advance money also.

7. Defendant no.1 has stated that he has sold his purchased land on 14.1.08. Defendant nos.2 to 5 and 8 to 10 filed their separate show cause stating that similar petition has already been rejected by the court previously on 14.7.2010. Defendant no.3 has sold his interest in favour of defendant nos.8 to 10. Defendants have denied that they are going to alienate the suit land or trying to change its physical feature. They are in possession over the suit land after purchasing it by registered sale deed.

8. Trial court has found that pursuant to oral partition of 1995, name of plaintiff has been mutated in the revenue records and he is in possession over the suit land which has been supported by other co-sharers also and accordingly allowed the injunction petition of the plaintiff restraining the defendants



from alienating the suit property as well as making any construction on the suit land.

9. After hearing the learned counsel for the parties, without interfering in the order passed by the trial court, the order is modified to the extent that in case of urgency or necessity, parties may approach the trial court to seek its permission for any alienation or making any construction over the suit land.

10. Accordingly, this miscellaneous appeal stands disposed of with a direction that parties shall not alienate or change the physical feature of the suit land or make any construction without permission of the trial court. The trial court is directed to expedite and conclude the trial within one year from the date of receipt/production of a copy of order passed by this Court.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.11.2019
Transmission Date	NA

