

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.326 of 2016

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Ramesh Chandra Sharma, S/o Late Dr. Deonandan Sharma, R/o Flat No. B/24
Ashraya Home Apartment Jagdeo Path Arah Garden Road Tapeshwar Colony,
Bailey Road, Patna.

... .. Appellant/s

Versus

1. Umesh Chandra Sharma S/o Deonandan Sharma
2. Smt. Bimla Kumari Sharma W/o Umesh Chandra Sharma
Both R/o Qr. No. 12-B Indra Nagar Kanke Road, Ranchi-8 Jharkhand.
3. Dr. Madan Prasad Sharma, S/o Late Deonandan Sharma, Flat No. 101
Rajiv Apartment near Hospito India, Budha Colony, Patna 1
4. Habindra Singh, S/o Late Mahendra Singh
5. Ranjan Kumar, S/o Late Mukeshwar Prasad
Both R/o C/o Late Deonandan Sharma, Goshala Road, Mithanpura, P.S.
Mithanpura, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhannjay Kumar No 2
For the Respondent/s : Mr. Sanjay Parasmani, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 10-07-2019

Heard the parties.

2. This appeal has been filed for setting aside the order dated 10.03.2016 passed by Sub-Judge-Vth, Muzaffarpur in Partition Suit No. 504/11 by which the learned court below has rejected the injunction petition filed on behalf of plaintiff under Order 39 Rule 1 and 2 of C.P.C.

3. Plaintiff/appellant has filed a suit for partition being partition suit No. 504/11 for partition of joint family property claiming 1/3rd share as detailed in schedule-A of the plaint which was purchased by Phool Kumari Devi wife of Deonandan



Sharma (mother and father of plaintiff and defendant Nos. 1 and 3) by a registered sale deed dated 26.07.1972 in the name of wife (defendant No. 2) of defendant No. 1 and defendant No. 3, as such, in revisional survey Khatiyani and other revenue records, the name of defendant Nos. 2 and 3 is recorded but same is joint family property liable for partition.

4. Plaintiff/appellant filed a petition under Order 39 Rule 1 and 2 of C.P.C. for grant of injunction against any alienation of suit property during pendency of suit and submitted that he has a strong prima facie case and balance of convenience is in his favour and he shall suffer irreparable loss if injunction is not granted.

5. In a partition suit filed by Phool Kumari Devi (mother of plaintiff and defendants) being Title Suit No. 168/83 in which Deonandan Sharma (father of plaintiff and defendants) was defendant No. 1 and his sons including plaintiff and defendants were impleaded as party defendants and same was compromised in which it was admitted by all the parties that suit land was purchased by Phool Kumari Devi in the name of daughter in law Smt. Bimla Kumari Sharma (defendant No.2) and her youngest son Dr. Madan Prasad Sharma (defendant No.3) and suit was decreed and compromise petition formed



part of decree. However, defendant Nos. 1 and 3 ignoring the said compromise decree have started claiming the suit property as their exclusive property and trying to sale the property and as such prayed for grant of injunction against any alienation of the suit property during pendency of suit.

6. The trial court has held that the suit is at the stage of hearing and plaintiff has been directed to adduce his evidence and at this stage injunction petition has been filed. Defendants in their show cause have denied the allegation or their any intention to transfer the suit property and plaintiff has filed an injunction petition only on basis of apprehension that defendants are contemplating to sell the suit property.

7. The trial court has further held that plaintiff has filed the suit for partition claiming 1/3rd share in the suit property and has also filed injunction petition and in a case of partition the prima facie case lies not only in favour of plaintiff but also in favour of defendants as both sides are co-parcenors and co-sharers of the suit property and one co-sharer cannot seek injunction against the other co-sharer only on the basis of suspicion. A member of joint Hindu Family has distinct right over undivided property and also rights and obligation towards each other.



8. After hearing the counsel for the parties, this Court finds that plaintiff has a prima facie case and it is the duty of the court to protect the lis and subject matter of the suit during pendency of suit and since it is joint family property no co-sharer or coparcenor can claim any specific portion of the joint property as its exclusive property. There is joint possession and joint ownership of all the co-sharers over the joint family property. Although defendants have stated that they have no intention to alienate suit land during pendency of suit, as such, appeal is disposed of that none of the parties can make any alienation of the suit property or any part of the suit property during pendency of suit. In case of necessity, the concerned party shall approach the trial court for permission for making any alienation of suit property or part of suit property or any alienation of his share in the suit property. The trial court is directed to conclude the trial at the earliest.

9. With such observation, this appeal is disposed of.

(S. Kumar, J)

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AFR/NAFR	NAFR
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