

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.773 of 2012

1.Ram Sanehi Mahto s/o Late Baldeo Mahto.
2.Jageshwar Mahto s/o Sri Vasudeo Mahto.
Both resident of village Mochha P.S. Bela District Sitamarhi.

...Defendants ... Appellant/s

Versus

1.Ram Das Mahato
2.Mahadeo Mahto
All sons of Late Guna Mahto.
3.Raj Kishore Mahato.
4.Ram Deo Mahato.
5.Smt. Kushani Devi d/o Gena Mahato w/o Sri Chhathu Mahato, r/o village +
P.S. Parphar, District Sitamarhi.

... plaintiff ... Respondent 1st Set.

6.Vasadeo Mahato s/o Late Geevachh Mahato, r/o village Mochha, p.s Bela
sub Division Sitamarhi Sadar District Sitamarhi.

... defendant ... Respondent 2nd Set.

Appearance :

For the Appellant/s : Mr. Ashok Kumar Jha, Adv
For the Respondent/s : None.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 23-10-2019

Heard learned counsel for the appellants but there is no
representation on behalf of the respondents.

2. This miscellaneous appeal has been filed on behalf of
defendants-appellants against the order dated 11.09.2012 passed
by Sub-judge-IV, Sitamarhi, in Partition Suit No. 249 of 2009 by
which the court below has allowed the petition filed by plaintiff
under Order 39 Rule 1 and 2 of CPC and granted order of status
quo.

3. Plaintiffs had filed suit for partition claiming $\frac{1}{2}$ share
in Schedule-1 property. In the plaint it has been stated that the



plaintiffs and defendants are descendants of common ancestor Govind Mahato, who had three sons Ram Saran Sharma, Ram nandan Mahto and Dwirik Mahato out of whom Dwirik Mahato died issueless in jointness. Plaintiffs are heirs of Ram Nandan Mahato and defendants are heirs of Ram Saran Sharma. After death of Govind Mahato, Ram Saran and Ram Nandan Mahato remained in joint possession.

4. It has been further submitted that Jeevach Mahato was illiterate and taking advantage of which during survey operation in 1959-60, defendants have got their names entered in the record of rights although there is unity of title and unity of possession of both the parties over the suit land.

5. Defendants-appellants appeared and filed their written statement in which they have denied that the suit land is joint family property rather there was previous partition between the parties and on the basis of which parties are in separate possession over their allotted share in said partition held in 1940 and parties have entered into several transaction of their allotted share.

6. Plaintiffs filed application under Order 39 Rule 1 & 2 of CPC for grant of injunction during pendency of partition suit which was allowed by the learned court below by impugned



order.

7. It has been submitted by learned for the defendants-appellants that three essential ingredients for grant of injunction is necessary i.e. prima facie case, balance of convenience and irreparable loss, which has neither been considered nor been discussed by the trial court while granting injunction on the application of the plaintiffs by the impugned order which is cryptic in nature. The court below has discussed nothing and has passed order of injunction, as such order dated 11.09.2012 passed by Sub-judge-IV, Sitamarhi, in Partition Suit No. 249 of 2009, is not sustainable and, accordingly, set aside and matter is remanded to the court below to pass fresh order on injunction petition filed by plaintiff afresh in accordance with law after granting reasonable opportunities to both the parties.

8. The miscellaneous appeal is allowed. The trial court is further directed to conclude the trial within one year from the date of production/receipt of a copy of the order passed by this Court.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.12.2019
Transmission Date	NA

