

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1047 of 2016

1. Jitendra Singh @ Jitendra Kumar, Son of- Sri Ram Janam Singh
2. Gautam Kumar, Son of- Ram Uday Singh
Both are Resident of Village- Berka, P.S.- Makhdumpur, District- Jehanabad.

... .. Appellant/s

(Defendant 2nd set in the court below)

Versus

1. Bind Kumar, Son of late Siya Ram Singh
2. Madhuri Devi, Wife of- Late Siya Ram Singh,
3. Gautam Kumar, Son of- Bind Kumar,
Minor under the guardianship of his next friend, well- wisher and father Bind Kumar
All resident of Village- Berka, P.S.- Makhdumpur, District- Jehanabad.

..... Respondent 1st Set

(plaintiffs in the court below)

4. Jitendra Singh, Son of- Late Jai Ram Singh, Resident of Village- Tineri, P.S.- Masaurhi, District- Patna.

.....Respondent 2nd set

(Defendant 1st set in the court below)

5. Antesh Yadav,
6. Chhotan Yadav.
Both Sons of- Late Sheonandan Yadav, Resident of Village- Naura, P.S.- Parasbigha, District- Jehanabad.
7. Vijay Yadav,
8. Sanjay Yadav.
Both Sons of- Rajnath Yadav, resident of Village- Berka, P.S.- Makhdumpur, District- Jehanabad.

... .. Respondent 3rd set

Appearance :

For the Appellant/s : Mr.Pritish Kumar Lal, Advocate

For the Respondent/s : Mr. S.B.K. Manglam, Advocate

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

CAV JUDGMENT

Date : 01-10-2019

Heard the parties.

2. This miscellaneous appeal has been filed for setting
aside the order dated 12.08.2016 passed by Sub-Judge-1st,



Jehanabad in Title Suit No.182/2015 by which learned court below has allowed the petition filed by plaintiffs under Order XXXIX Rules 1 and 2 of CPC restraining the defendants from alienating the suit land or dispossessing the plaintiffs from the suit land during pendency of suit.

3. Plaintiffs had filed Title Suit No.182/2015 for a declaration that sale deed executed by defendant no.1 and 2 in favour of defendant nos.3 to 8 does not create any right, title and interest and also for setting aside such sale deeds.

4. Tapeswar Singh was the common ancestor of plaintiffs and defendants who married Chandra Jot Kuer and from said wedlock, two sons Jai Ram Singh and Siya Ram Singh were born. Chandra Jot Kuer was daughter of Pragash Singh who had a brother Adya Singh who remained unmarried and after death of his father, Pragash Singh, Adya Singh had no successor other than her niece, Chandra Jot Kuer and in the year 1965, Adya Singh executed two deed of gifts in favour of Jai Ram Singh and Siya Ram Singh in respect of 19 acres 14 decimals of land situated at village, Berka, P.S. Mukhdumpur, District, Jehanabad and which is the subject matter of dispute in present suit.

5. Jai Ram Singh was elder and he became manager of



the family and became dishonest and started ill-treating his younger brother Siya Ram Singh as a result of which, he became mentally sick.

6. After death of Tapeswar Singh in the year 1978, Jai Ram Singh sent his brother Siya Ram Singh to village Berka to manage the gifted property which caused much mental agony and stress to Siya Ram Singh whereas Jai Ram Singh enjoyed the property of estate having come in possession of all other movable and immovable properties. In the year 1990, Siya Ram Singh fled away from the village and became traceless.

7. Out of 19 acres 14 decimals of land under the gift executed by Adya Singh, 2 acres 15 decimals were kept for funeral expenses and only 16 acres 19 decimals lands were left, however, on physical verification, it was found to be 12 acres 32 decimals which was carved out in Chak no.350. Plaintiff got 6 acres 15 decimals from the south of the Chak and few plots situated north of Chak and defendants were given Northern portion.

8. Defendant No.1 Jitendra Singh kept plaintiff harassing and torturing and initiated frivolous criminal as well civil proceeding against them. Defendant first set have sold the lands of plaintiffs bearing plot no.780, area 16 decimals out of



64 decimals, plot no.762 area 20 decimals out of 40 decimals, plot no.779 area 16 decimals out of 54 decimals to Chhotan Yadav and Antesh Kumar vide sale deed dated 5.03.2013. Defendant first party have further sold lands of plaintiffs bearing plot no.777 area 15.5 decimals to Vijay Yadav and Sanjay Yadav vide sale deed dated 24.10.2013. Defendant first party have sold lands of plot no.791 area 10 decimals, plot no.790 area 25 decimals and plot no.754 are 1.07 acres vide sale deed dated 13.01.2015 against which present suit has been filed.

9. Case of defendants- appellants is that Jai Ram Singh and Siya Ram Singh partitioned the lands at the village Berka including their purchased land in the year 1982 by meets and bounds and a partition schedule was prepared among Jai Ram Singh, his wife Naraiyani Devi and son Jitendra Singh at one part and Siya Ram Singh, his wife Madhuri Devi and son Bind Kumar on other part and each of them got 3.12 acres respectively under the partition schedule and on basis of said schedule, demand was created in their favour and they paid rent and got rent receipt. Jai Ram Singh, Naraiyani Devi and Jitendra Singh were in exclusive possession over the lands coming in their share including the suit lands and the appellants have purchased altogether 2 acres 6.5 decimals as detailed in



Schedule I of their written statement from defendant first set by a registered sale deed on 30.01.2015 after paying the consideration amount and came in possession over the purchased land and also got their name mutated and are paying rent and getting rent receipt. They have also been granted land possession certificate by the Anchal Adhikari.

10. Plaintiffs filed an application under Order XXXIX Rules 1 and 2 of CPC for restraining the defendants from alienating suit land as well as dispossessing them on the basis of three sale deeds dated 05.03.2013, 24.10.2013 and 30.01.2015 executed by defendant nos.1 and 2 in favour of defendant nos. 3 to 8. Defendant nos.3 and 4 appeared, however, remaining defendant nos.5 to 8 did not appear. Defendant nos.3 and 4 are in actual possession from the date of execution of sale deed and prior to them, their vendors defendant nos.1 and 2 were in possession over the land. The defendant nos.3 and 4 who are purchasers are in possession of their purchased land measuring 2.6 and ½ acres.

11. Plaintiffs have admitted that there has been no partition among the heirs of late Tapeswar singh by meets and bounds. They are in peaceful possession over their share allotted by family arrangement. They have accepted the family



arrangement in 1982 and land was divided among all co-sharers for purpose of creating separate jamabandi and liability to pay the revenue to the State. The family arrangement in the year 1982 only indicates the extent of share in a particular plot. Even prior to family arrangement of 1982, plaintiffs cultivated his share in disputed plot from southern side and defendant first party had their share in the northern part of the plot. As plaintiff is agriculturist, he cultivates his land whereas defendant nos.1 and 2 did not cultivate their share and same became orchard and is not a cultivable land.

12. In the family arrangement of 1999, plaintiffs have been allotted share in southern side of disputed plots whereas defendant no.1 and 2 were given their share in the northern side. Said family arrangement of 1999 was signed by Jairam Singh, father of defendant first party in which plaintiffs have been shown in possession over southern side of the disputed plots. Plaintiffs had taken a loan from Ram Das Yadav and for which he had executed Tizara in his favour on 31.07.2003 and who is still in possession of that part which is situated in southern side of the plot. A registered agreement for sale of the disputed plot was entered between appellant and father of Jitendra Singh in the year 2005 and pursuant to said registered



agreement, appellant no.2 came in possession of the northern part of the disputed plot, however, even having the full knowledge that on the disputed plots, plaintiffs are in cultivable possession over the southern part of plots whereas defendant first party are in possession of northern part of the plots, still by the registered sale deeds, lands of southern part of the plaintiff were sold.

13. Plaintiffs have admitted the share of defendant first party in all disputed plots to the extent of half. The disputed plots were inspected by the Sarpanch on the spot and in his report dated 15.09.2014, he found cultivable possession of plaintiffs over southern part of disputed land.

14. As on the basis of sale deed, plaintiffs were threatened to be dispossessed on an application filed before the Circle Officer, Makdumpur a report was submitted by the police to the Circle Officer on 06.08.2016 in which also possession of the plaintiffs was shown and appellants were found to be forcibly trying to dispossess plaintiffs. On written complaint filed by plaintiff no.2, Makdumpur P.S. Case No.2010 of 16 dated 17.08.2016 was instituted against the appellants under different sections of IPC and police submitted charge-sheet against the appellants after finding the allegations to be



true against them. Three submersible boring on the plot was found which was sunk by plaintiffs for cultivation also supports the case of plaintiffs.

15. On the basis of materials available on record, the court below found the possession of the plaintiffs over the disputed plots for which sale deeds have been executed by defendant nos.1 and 2 in favour of defendant nos. 3 and 8, and has allowed the injunction petition filed on behalf of the plaintiffs restraining the defendant 2nd set from alienating the suit property and also restraining them from interfering with the peaceful possession of plaintiffs during the pendency of title suit.

16. After hearing both the parties and considering the materials available on record, this Court does not find any illegality or irregularity in the order passed by the court below granting injunction in favour of plaintiffs.

17. Accordingly, there is no merit in this appeal and the same is dismissed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	25.06.2019
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Transmission Date	NA

