

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.8 of 2015

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Smt. Sanchaita Dutta (nee Mitra) wife of Sri Debasis Dutta and daughter of Late Bijay Kumar Mitra, resident of 538/2, Mohanpur, Punaichak, P.S.- Shastrinagar, Town and District- Patna.

... .. Appellant/s

Versus

1. Sri Alok Kumar Mitra, son of Late Bijay Kumar Mitra, resident of 8, Acharya Mahavir Prasad Dwivedi Road, P.S.- Kotwali, Town and District- Bhagalpur.
2. Madhumita Ghosh (nee Mitra), wife of Late Pradeep Kumar Ghosh and daughter of Late Bijay Kumar Mitra, residing at E-301, Gokul, Gokul residency, Thakur Village Kandivilli (East), Mumbai-400101.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. K.D. Chatterji, Sr. Advocate
	:	Mr. Chandan Jha, Adv.
For the Respondent/s	:	Mr. S.K. Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 06-08-2019

Heard the parties.

2. This miscellaneous appeal has been filed by the plaintiff/appellant for setting aside order dated 22.10.2014 passed by learned Sub-Judge-V, Bhagalpur in Title Suit No. 664 of 2013 by which learned court below has rejected the petition filed by plaintiff/appellant under Order 39 Rule 1 and 2 of CPC.

3. Plaintiff/appellant had filed a partition suit being Title Suit No. 664/13 for partition of joint family property as detailed in schedule A of the plaint in which plaintiff claimed 1/3rd share in the suit property.

4. Plaintiffs and defendants are governed by



Dayabagha school of Hindu Law and plaintiff and defendant No. 2 are daughters whereas defendant No. 1 is son of Late Bijay Kumar Mitra who died on 15.07.1994. Plaintiff and defendants jointly succeeded to the property of their father. However, property remain in management and control of defendant No. 1. The suit property was mutated in the name of defendant No. 1 on basis of forged and fabricated document and plaintiff/appellant also came to know that defendant No. 1 has entered into agreement to alienate joint family property depriving appellant her due share in the joint family property.

5. Plaintiff/appellant had filed an application under Order 39 Rule 1 and 2 to restrain defendant No. 1 not to alienate the suit property or any part of the suit property or change the physical feature of the property and to maintain status quo over the suit property during pendency of suit. However, the learned Sub-Judge-V, Bhagalpur by order dated 22.10.2014 rejected the injunction petition filed by plaintiff/appellant to grant status quo over the suit property.

6. The trial court has held that the plaintiff/appellant has prima facie case and balance of convenience is also in her favour but there is no irreparable loss to the plaintiff/appellant and as such rejected her injunction petition.



7. As the impugned order is of 22.10.2014 as such without interfering with the order passed by the learned court below, the trial court is directed to expedite and conclude the trial within one year from the date of receipt/production of a copy of the order passed by this Court. However, during pendency of partition suit, parties are restrained from alienating the suit property or any portion of suit property without permission of the trial court.

8. The miscellaneous appeal is disposed of.

(S. Kumar, J)

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AFR/NAFR	NAFR
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