

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.777 of 2016

1. Sarika Kumari D/o Sri Umesh Chandra Sharma.
2. Umesh Chandra Sharma S/o Late Yadunandan Sharma Both resident of Jaynagar Ward No-2, Kishan Bhawan Road. Town and P.S-Jaynagar. District-Madhubani, Bihar.

... .. Appellant/s

Versus

1. Sri Pashupati Prasad Bairoliya S/o Late Radhe Shyam Bairoliya
2. Smt. Urmila Devi W/o Sri Pashupati Prasad Bairoliya
3. Sri Sumant Kumar Bairoliya
4. Sri Nitin Kumar Bairoliya Both sons of Sri Pashupati Prasad Bairoliya All SI.No.1 to 4 are resident of Jaynagar Notified Area Ward No-2, Patna-Gaddi Road. Town and P.S-Jaynagar District-Madhubani, Bihar
5. Sri Ravi Ranjan Bairoliya S/o Late Vijay Kumar Bairoliya Resident of Jaynagar Ward No-2, Patna-Gaddi Road, Town and P.S-Jaynagar. ,District-Madhubani Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shashi Nath Jha, Adv.
For the Respondent/s : Mr. Abinash Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 09-07-2019

Heard the parties.

2. This miscellaneous appeal has been filed against judgment and order dated 10.02.2016 by learned Sub-Judge 1st, Madhubani in Title Suit No. 109 of 2015 by which plaintiff's petition dated 07.10.2015 filed under Order 39 Rule 1 & 2 CPC for grant of injunction has been allowed.

3. Title suit No. 109 of 2015 was filed by the plaintiffs/respondents in the court of Sub-Judge 1st, Madhubani



against defendants 1st party for his eviction from schedule 8 property and also for declaration that sale deed dated 24.11.2014 (Schedule 10 of plaint) is null and void. It is further submitted by the plaintiff that defendant No. 1 Umesh Chandra Sharma is tenant of plaintiff 2nd party and defendant No. 3 his agnate who has executed sale deed in name of Sarita Kumari (defendant No. 2) daughter of Umesh Chandra Sharma defendant No. 1. Defendant is trying to re-construct the building and as such prayed for injunction restraining defendant 2nd party from making any construction.

4. Defendant 1st party in his show cause stated that he was tenant of Radhe Shyam Bairoliya (grandfather of defendant 2nd party) and after partition in the family of Radhe Shyam Bairoliya, the suit land was allotted in the share of Bijay Kumar Bairoliya, full brother of plaintiff No. 1 and thereafter defendant No. 1 became the tenant of Bijay Kumar Bairoliya who had two sons Sonu Bairoliya and Ravi Ranjan Bairoliya and after death of their father Bijay Kumar Bairoliya partition took place and schedule 8 of plaint was allotted in the share of Ravi Ranjan Bairoliya who executed sale deed on 24.11.2014 in favour of defendant No. 2 and since kitchen of the premises was in dilapidated condition, as such, some repair was needed,



however, he undertook that he will not disturb the structure of building still the trial court has passed an order of status quo which amounts to granting of injunction in favour of plaintiff, although admittedly plaintiff is not in possession of the house and suit has been filed for declaration of title, recovery of possession and for setting aside sale deed executed in favour of defendant 1st party by defendant 2nd party, as such, without deciding any prima facie case in favour of plaintiff or any balance of convenience in his favour or any irreparable loss to the plaintiff, the trial court has passed order of status quo.

5. After hearing the parties and perusing the order as impugned, this Court finds that in absence of three essential ingredients i.e. prima facie case, balance of convenience and irreparable loss in favour of plaintiff there was no occasion for the trial court to pass an order of status quo with respect to schedule 8 of suit property when defendant 1st party was in possession of schedule 8 property and had undertaken that except repair of the part of building which has become necessary he will not make any change in the structure of building, as such, the order passed by the trial court is set aside and defendant 1st party is permitted to carry out repair work in his house subject to his undertaking that he will not make any major alteration in



the structure of the building during pendency of suit.

6. This miscellaneous appeal is allowed to the extent as indicated above.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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