

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.340 of 2015

1. Anurag Prasad Jaiswal
2. Anurodh Kumar
3. Abhishek Kumar All sons of Late Shambhu Nath Jaiswal
4. Most. Kamla Devi W/o Late Shambhu Nath Jaiswal

All Resident of Mohalla- Ishakpur, M/s Choudhary Colour Company,
Mahnar, P.S. Mahnar, District- Vaishali

... .. Appellant/s

Versus

1. Dharmshila Devi W/o Late Jai Mangal Prasad Jaiswal
2. Sidharth Prasad Jaiswal
3. Arun Kumar Jaiswal
4. Anil Kumar Jaiswal
5. Sushil Kumar Jaiswal Respondent No. 2 to 5 sons of Late Jai Mangal Prasad Jaiswal Respondents No. 1 to 5 Resident of Mohalla- Ishakpur, M/S Choudhary Colour Company Mahnar, P.S. Mahnar, District Vaishali
6. Most. Poonam Jaiwal, W/o Late Ashok Kumar Jaiswal
7. Ravi Bikram, S/o Late Ashok Kumar Jaiswal
8. Sunil Kumar Jaiswal S/o Late Jai Mangal Prasad Jaiswal
9. Binod Kumar Jaiswal S/o Late Jai Mangal Prasad Jaiswal Respondent No. 6 to 9 Resident of Purnia City, P.O.- Purnia, P.S. Purnia Town, District Purnia
10. Raj Kumar Jaiswal
11. Sanjeev Kumar Jaiswal Respondent No. 10 & 11 sons of Late Jagdish Chaudhary, Resident of Mohalla- Near Purnia Junction Khuskibagm, P.S. Purnia, District Purnia
12. Radhey Shyam Jaiswal S/o Late Vishwanath Chaudhary
13. Amarnath Jaiswal S/o Late Vishwanath Chaudhary
14. Rakesh Jaiswal S/o Late Mahavir Chaudhary
15. Harischandra Chaudhary S/o Late Mahavir Chaudhary
16. Mita Devi W/o Murlidhar Mishra



17. Deep Nandan S/o Mohan Mishra
18. Aruna Devi W/o Anil Kumar Barnwal
19. Mukesh Kumar Sah S/o Raghunath Sah Respondent No. 12 to 19 Resident
of Mohalla- Ishakpur, M/s Choudhary Colour Company, Mahnar, P.S.
Mahnar, District Vaishali

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Surendra Kishore Thakur, Adv
For the Respondent no. 1 to 4: Dr. Rajesh Kumar Singh, Adv Mr. Sanjay Kumar
Jha, Adv and Mr. Anant Kumar Bhaskar, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 26-06-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed on behalf of the plaintiffs-appellants for setting aside the order dated 28.05.2015 passed by Sub-Judge-III, Vaishali at Hajipur in Partition Suit No. 424 of 2006, by which learned court below has rejected the application for ad interim injunction restraining the defendants not to execute any sale deed.

3. Briefly stated, the facts of the case is that plaintiffs-appellants have filed a suit for partition being Partition Suit No. 424 of 2006 in the court of Sub-Judge-III, Vaishali at Hajipur for partition of joint family property and carving out their 1/9 share with respect to Schedule-1 and 2 land and 1/2 share with



respect to Schedule-3 lands. Common ancestor Mahabir Choudhary had four sons namely, Jai Mangal Choudhary, Vishwanath Choudhary, Jagdish Chaudhary and Harishchandra Chaudhary.

4. Jai Mangal Choudhary had two wives and from first Wife (Sita Sundar Chaudharain) Shambhu Nath Jaiswal and Siddharth Prasad Jaiswal (defendant no. 2) and one daughter Hiramani Devi were born and after death of his first wife, from second wife-Dharmshila Devi (defendant no. 2) six sons were born who are defendant nos. 3 to 8. Shambhu Nath Jaiswal died and thereafter present suit for partition has been filed on behalf of his legal heirs.

5. It has been further stated in the plaint that there was deed of partition dated 01.04.1976 between the four sons of Mahabir Choudhary, and M/s Choudhary Colour was allotted in the share of Jai Mangal Prasad Jaiswal. Shabmhu Nath Jaiswal although he was major but showing him as a minor a deed of agreement dated 10.08.1978 was entered between the family members in which only 15 per cent of share was allotted to said Shambhu Nath Jaiswal s/o Late Jai Mangal Prasad Jaiswal and defendant no. 1 Dharmshila Devi his Step-Mother was made his guardian and thereafter by partition deed dated 26.07.1990, he



was removed and was allotted no share in said M/s Choudhary Colour Company by playing fraud and thereafter are being threatened of being dispossessed from the joint family house as such partition suit was filed by the legal heirs of deceased Shambhu Nath Jaiswal.

6. Defendants nos. 1 to 8 have appeared and filed their written statement stating that there is no unity of title and possession over the suit land.

7. Plaintiffs have filed application under order 39 Rule 1 and 2 of CPC for grant of temporary injunction during pendency of partition suit restraining the defendants from alienating the suit property and for which different sale deeds executed by defendants in favour of different persons were enclosed.

8. After hearing the parties, the trial court has held that similar petition filed on behalf of plaintiffs for grant of temporary injunction was rejected on 19.04.2012 as no *prima facie* case was made out in favour of plaintiff, neither balance of convenience was in favour of plaintiffs nor they would suffer any irreparable injury by refusing grant of temporary injunction. The learned court below after considering the arguments advanced on behalf of the parties found that there was no fresh



ground to re-consider the injunction petition filed by plaintiffs-appellants and rejected their petition by order dated 28.05.2015.

9. After hearing the parties and considering the materials available on record, this Court does not find any illegality, irregularity, error or infirmity in the order passed by the learned court below.

10. However, it is observed that the parties in case of necessity shall obtain permission of court below where suit is pending before alienating any part of suit property.

11. The trial court is directed to conclude the trial of partition suit within one year from the date of receipt/production of a copy of the order passed by this Court.

Subject to the aforesaid observation and direction, this application is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.07.2019.
Transmission Date	NA

