

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.245 of 2018

Lakshman Prasad Bhoop, Son of Late Ban Bihari Prasad Bhup, Resident of
Durga Kothi, Gaurakshani, Police Station- Mofassil, District- Gaya.

...Defendant no.2 / ... Appellant/s
Versus

1. Jeevan Sharma
2. Diwakar Sharma,
Both sons of Late Shyam Sundar Sharma, Residents of 337 Chura Kankar,
Hali Darwaja, Mathura U.P., Police Station- Mathura, District- Mathura
U.P.. at present resident of Mohalla- Shaheed Road, Gaya, Police Station-
Kotwali, District- Gaya Bihar.
.....plaintiffs/respondent 1st set
3. Abahy Bhoop, Son of Late Ramjee Prasad Bhoop, Permanent resident of
Durga Kothi, Gaurakshani, Police Station- Mofassil, District- Gaya.
4. Pushpa Bhoop, Wife of Late Ramjee Prasad Bhoop, Durga Kothi,
Gaurakshani, Police Station- Mofassil, District- Gaya.
.....substituted defendant no.1A & 1B/ respondent 2nd set
5. Harendra Kumar Singh @ Harendar Kumar Singh, Son of Late Ramparvesh
Singh, Resident of Village- Gere, Police Station- Muffasil, District- Gaya.

Defendant no.3/ Respondent 3rd set

Appearance :

For the Appellant/s : Mr. P. N. Shahi, Sr. Advocate
Mr. Avinash Kr. Singh,
Mr. Shivam, |Advocates

For the Respondent/s : Mr. Ravindra Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 06-08-2019

Heard.

This appeal on behalf of defendant is filed for setting
aside the order dated 16.12.2017 passed in Tittle Suit No. 48 /
2016 by learned Sub-judge, X, Gaya by which petition dated
21.2.2017 under Order XXXIX Rules 1 and 2 of CPC filed by
plaintiffs has been partly allowed.



Plaintiffs have filed the suit that properties as detailed in schedule of plaint was allotted by a registered family partition dated 6.1.1947 to the defendants. In said partition, schedule A property was allotted to Ban Bihari Prasad @ Bhoop Babu who died leaving behind his two sons Ramji Prasad Bhoop and Laxman Prasad Bhoop who are the defendants in the present suit.

Plaintiff is running a sweet shop and doing business in part of said suit premises as a tenant and defendants approached them for a loan of rupees five lakhs and same was provided by the plaintiffs with a condition that if defendants intend to sell the suit property in future then plaintiffs would have preferential right to purchase it which was valued as rupees fifty lakhs and agreement dated 16.7.1999 was entered between the parties. However, plaintiffs came to know that defendants are contemplating to sell the suit property to other persons and approached them on 5.12.2016 to abide by the agreement but same was denied, as such, present suit was filed.

Defendants have denied of any such agreement executed on 16.7.1999 between them and if any such document is brought, same is forged and fabricated documents.

Plaintiffs filed an injunction petition on 3.2.2017 to



restrain the defendants from alienating the suit premises till disposal of the suit and further filed another petition on 21.2.2017 stating therein that Laxman Pd. Bhoop and Ramji Praasd Bhoop alienated a part of suit premises by selling it to Harendra Kr. Singh by a registered sale deed dated 4.2.2017 and prayed for injunction to restrain defendant nos.1 and 2 from alienating remaining part of the property upon which trial court passed an interim order dated 4.3.2017 to maintain status quo.

During pendency of suit, Ramji Pd. Bhoop (defendant no.1) died on 19.6.2017 and their legal heirs have been substituted in his place and they filed their reply and after hearing both the parties, the court below passed an order dated 16.12.2017 by which petition dated 21.2.2017 filed by plaintiffs was partly allowed and defendants were restrained from transferring or interfering with the possession of plaintiffs in the portion which is rented out to the plaintiffs.

In a suit for specific performance of contract, injunction with respect to suit property cannot be granted as any such agreement between the parties does not create any right in the property. It only provides a cause of action to bring a suit claiming and equitable right of purchase. An agreement merely creates a right to get another document which will confer



right, title and interest in the property.

In the present case, plaintiffs are admittedly in possession over the part of suit property as a tenant and they cannot be dispossessed except by an eviction suit, as such, the finding of the court below that if injunction is not granted they will be suffer irreparable injury is not correct. They have filed the present suit on the basis of unregistered agreement entered between plaintiff and defendants in which defendants had agreed that in future if they intend to sell the property, plaintiffs shall have a preferential right to purchase the suit property. A court of law can grant any relief to the plaintiff if he has any legal right which can be enforced by a court of law. However, in present case, there is no such preferential right in law. Plaintiffs are claiming such right by way of unregistered agreement which is denied by the defendants and same requires to be adjudicated by the trial court.

Accordingly, when no such right exists in favour of plaintiffs on basis of which they can claim any preferential right to purchase the suit property, there was no occasion for the trial court to restrain defendants by an order of injunction from dealing with their property in the manner they like. Plaintiffs' possession over the part of the suit property as tenant will



remain secured even defendants sell the property and in such condition, the purchaser will become the landlord and plaintiffs their tenants.

Plaintiffs do not have any prima facie case, neither balance of convenience leans in their favour nor will they suffer any irreparable injury if injunction is not granted whereas defendants being owner of the property cannot be restrained from enjoyment of their property in the manner they like particularly in a case where relief to be granted is discretionary in nature. As such, the order dated 16.12.2017 passed by the learned Sub-Judge, -X, Gaya is set aside and injunction petition filed by the plaintiffs is dismissed. The trial court is directed to expedite and conclude the trial within one year from the date of receipt/production of copy of order passed by this Court. The present order is subject to the final outcome of the suit.

Miscellaneous appeal stands allowed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.11.2019
Transmission Date	NA

