

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.443 of 2014

=====

Bishwa Mohan Mishra Son of Late Bhagwan Chandra Mishra, at present residing at Mohalla Adarsh Colony Damuchak Majhaulia Road, PS and District Muzaffarpur.

... .. Defendant/ Appellant/s

Versus

1. Kiran Ojha wife of Suresh Chandra Mishra, d/o Late Bhagwan chandra Mishra, r/o Bhawdeopur Main Road PO and PS and District Sitamarhi.

... .. Plaintiff/ Respondent/s 1st Party.

2.Vina Mishra wife of late Chandra Mohan Mishra.

3.Rajiv Ranjan.

4.Sanjiv Ranjan

5.Prabhat Ranjan.

All are sons of Late Chandra Mohan Mishra.

All are presently residing at Motihari Mathia Zirat, West from NH 28, PO Motihari PS Chhatauni, District East Champaran.

6.Kalindi Mishra son of Chandra Mohan Mishra r/o Mohalla Bhawdeopur Main Road, PO and PS and District Sitamarhi.

7.Nutan Tiwari, wife Mahanand Tiwari, d/o LatBhagwan chandra Mishra.

At present residing at Quarter No. 47J, Old DTS Building 47, PO and District Samastipur.

....Defendants 2 to 7.... Defendants 2nd party... Respondents 2nd party

8.Shatrughan Raut.

9.Pramod Raut.

Both are sons of Late Bharat Raut.

Both are resident of village and PO Karmapa, PS Dhaka, District East Champaran.

.....Defendants 3rd Party/Respondents 3rd party

=====

Appearance :

For the Appellant/s	:	Mr.Arun Kumar Prasad, Adv
For the Respondent/s	:	Mr.T.N. Maitin, Sr. Adv and Mr. Rajeev Kumar Sinha, Adv

=====



CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 16-04-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed for setting aside the order dated 10.06.2014 passed by Sub-Judge-VIII, Motihari in P.S Case No. 631 of 2013, by which the learned court below has allowed the injunction petition filed by plaintiff.

3.Plaintiff has filed a suit for partition being Partition Suit NO. 631 of 2013, for getting her 1/5th share in the suit property as detailed in Schedule-2 of the plaint on the ground that suit property are ancestral properties and there had been no partition among heirs of late Bhagwan Chandra Mishra, who died intestate leaving behind plaintiffs and defendants as his legal heirs and successors.

4. Defendant no. 1-Appellant appeared in the suit and filed his written statement stating therein that late Bhagwan Chandra Mishra in his lifetime had partitioned his entire properties between his two sons, by a deed of partition dated 23.06.1986 and after death of Bhagwan Chandra Mishra in 1987 his two sons on the basis of said partition mutated their names in revenue records of State of Bihar, and correction slip was issued and jamabandi was created in the name of two brothers and since then they are coming in peaceful possession of their



respective lands and have also entered into several transactions from their allotted share and present suit has been filed after 20 years of said partition and most of the Schedule-2 lands of plaintiff has already been sold.

5. Plaintiff filed a petition under Order 39 Rule I and II of CPC to restrain defendants from alienating suit property and also from making any construction over the suit land or to change its physical feature or any attempt to dispossess the plaintiff from suit land.

6. Plaintiff is married daughter of late Bhagwan Chandra Mishra who died in the year 1986 and she is claiming her share in property of her deceased father. Admittedly, after death of father of plaintiff and defendants, the lands have been mutated in the name of defendants in revenue records of the State of Bihar on basis of deed of partition dated 23.06.1986, defendants got possession over their allotted share and are also dealing with those properties as per their wish without any objection or interference from any side as such plaintiff cannot be said to have established any prima facie case and unless plaintiff is able to establish prima facie case no injunction could have been granted by the trial court considering the suit land to be a joint family property liable for partition.



7. Since, order was passed way back on 10.06.2014 granting injunction same is modified to the extent that in case of necessity defendants can make any alienation or construction over the suit land after obtaining permission from court below where suit is pending. Trial court is further directed to decide the partition suit at the earliest if not yet decided.

8. The miscellaneous appeal is disposed of with aforesaid direction and observation. The order is subject to final outcome of the partition suit.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.06.2019
Transmission Date	NA

