

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.641 of 2017

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1. Syed Aquil Abbas (Attorney Holder) Son of Late Syed Gulam Abbas Naquvi, Resident of Mohalla- Nauzer Katra, P.S.- Khajekala, Patna City- 800008.
 2. Sanobar Hussain Reshty, wife of Taqi Reshty, Resident of 5, Cunnings Avenue, Pemulouy, NSW 2145 Australia.
 3. Farah Hussain Bardai @ Farah Bardai, wife of Anwar Bardai, resident of 118, Maple Street, Needham, MA 02492 United State of America.

... .. Appellant/s

Versus

1. Zakir Hussain son of Late Wazir Hussain Khan, resident of 68, South Gandhi Nagar, Boring Road, Patna- 800001.
2. Nastaran Hasan, wife of Dr. Kausar Hasan, resident of E-4/1, Maymar Drive, Rashid Minhas Road, Gulshan-e-Iqbal, Block- 10, Karachi, Pakistan.
3. Fatema Hussain, wife of Zakir Hussain, resident of 68, South Gandhi Nagar, Boring Road, Patna- 800001.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vijay Shankar Tiwari, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 15-07-2019

Heard the parties.

2. Plaintiffs/appellants have filed this miscellaneous appeal against the ex parte order against defendant No. 1 and 1(a) dated 24.05.2017 passed in Title Partition Suit No. 284 of 2016 by Sub-Judge VIII, Patna by which the learned Sub-Judge has refused to grant injunction in favour of plaintiffs/appellants to restrain defendant No. 1 and 1(a) from alienating or changing the nature of suit property.

3. Plaintiffs have filed the suit for declaration of their



60% share in the property in different schedules of the plaint. Plaintiff Nos. 2 and 3 reside outside India, who are sisters of defendant No. 2, who also reside outside India. Defendant No. 2, who is the sister of plaintiffs gifted her share to plaintiff Nos. 2 and 3. Defendant No. 1 is brother of plaintiff Nos. 2 and 3. Defendant No. 1(a) is wife of defendant No. 1. Defendant No. 1 resides in India, as such, he was authorized by the plaintiffs to look after their share in the property, however, he became dishonest and purchased two properties from the income of joint family property as detailed in schedule 2 and 3 of the plaint in the name of his wife defendant No. 1(a).

4. In spite of valid service of notice, defendant Nos. 1 and 1(a) had chosen not to appear in the court below, as such, suit was directed to proceed ex parte against them.

5. An injunction petition was filed on behalf of plaintiffs as defendant Nos. 1 and 1(a) were negotiating to sell the joint family property in which they have share as detailed above and also from restraining them from transferring or alienating any right or interest or changing the physical feature of suit land during pendency of suit. Defendant No. 2 who is the sister of plaintiff Nos. 2 and 3 have supported the case of plaintiffs.

6. Notices were issued to respondent Nos. 1 and 3 who



were defendant Nos. 1 and 1(a) in the court below but in spite of valid service of notice they have chosen not to appear, as such this appeal is being decided ex parte against them.

7. It is an admitted fact that the schedule property as detailed in plaint is the joint property in which plaintiffs and defendants have share, however, since the plaintiffs and defendant No. 2 reside outside the country, taking advantage of their absence, defendant No. 1 and 1(a) are misappropriating and acting against the interest of the plaintiffs and defendant No. 2. Their title and interest in the property is not disputed and the injunction has only been rejected on the ground that they do not have possession over the suit land. It is an well accepted proposition of law that in a joint property every co-owner/co-sharer has right and interest in the joint property and same cannot be alienated or nature of property can be changed without consent of other co-sharer/co-owner. Possession of one co-owner/co-sharer is possession of all co-owners/co-sharers. No co-owner/co-sharer can claim any specific property belonging to him unless and until there is partition between the parties, as such, there is prima facie case in favour of plaintiffs and balance of convenience also leans in their favour and any alienation or change in nature of property will cause irreparable



loss to the plaintiffs, as such, the injunction petition filed by the plaintiffs is allowed and defendants are restrained from alienating or creating any encumbrance over the property or changing the nature of property as detailed in the plaint during pendency of suit.

8. This miscellaneous appeal stand allowed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.08.2019
Transmission Date	N.A.

