

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.389 of 2014

Dinesh Prasad Sinha, Son of Late Dharmanath Sahay, Resident of Village and P.O.-
Atimi, P.S- Nawanagar, District – Buxar .. Applicant ... Appellant/s
Versus

1. Shiv Nath Yadav, Son of Late Daroga Yadav
2. Hare Ram Yadav
3. Hare Krishna Yadav
Both Son of Late Shiv Prasad yadav opposite parties/ respondents

Appearance :

For the Appellant/s : Mr. Ambuj Nayan Chaubey, Advocate
For the Respondent/s : Mr. Diwakar Prasad Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 08-07-2019

Heard the parties.

2. This miscellaneous appeal has been filed against the order dated 04.04.2010 passed in Miscellaneous Case No.2/2012 by the District Judge, Buxar dismissing the petition under Section 192 of the Indian Succession Act on the ground that although applicants/appellants are in possession over the land but since there is no dispute of title of the applicant with regard to the property which they inherited by succession as such, no miscellaneous case under Section 192 of Succession Act is maintainable and dismissed petition in limine.

3. Appellant filed a petition dated 12.11.2012 in the court of District Judge under Section 192 of Succession Act giving rise to Miscellaneous Case No.02/2012 stating therein that they have exclusive right, title, interest and possession over the land detailed in Schedule I of petition. Shyam Bihari



Lal was the grandfather of applicants/appellants who had one son, Dharmnath Sahay who died leaving behind applicant and his five brothers who are joint owner and have joint possession over the land.

4. The grandfather and father of the applicant fought litigation against Fuljharo Devi up to Hon'ble Supreme Court and in Civil Appeal No.426/1959 decided on 05.09.1962 the right, title, interest and possession on the property as described in Schedule I have been affirmed and same are ancestral property of the father and grandfather of the petitioner/appellant.

5. The opposite party -respondents are purchasers from Fuljharo Devi, wife of Randhir Prasad who had executed sale deed in favour of opposite party- respondents and said Fuljharo Devi fought cases up to Hon'ble Supreme Court and lost and the property of Schedule I has been declared to belong to the applicants (Appellants) and since vendor of the opposite party- respondents have no title, as such, purchasers/opposite parties-respondents have no title and possession over Schedule I land.

6. In the consolidation proceeding also, the land has been incorporated in the name of appellants' father late Dharm



Nath Sahay bearing case no.27 of 1980-81 by the Consolidation Officer, Nawanagar dated 21.5.1991 on the basis of judgment of Apex Court in favour of petitioner/appellant. The Bihar Government has recognized the applicant as tenant and issued rent receipts after payment of rent by the appellant.

7. Applicants /appellants filed a petition against their apprehension against forceful dispossession by opposite parties from the land in question which was imminent and grave and, as such, they have filed this petition for protection over the property as mentioned in miscellaneous petition.

8. Opposite parties – respondents have appeared and have filed their counter affidavit in which they have stated that they are purchasers from Fuljharo Kuer by a registered sale deed executed by her in the year 1978 and the courts and consolidation authority have found said Fuljharo Kuer to be co-owner and having joint possession over the land

9. Learned counsel for the opposite parties submits that for the same property the suit is pending before the sub-Judge in which defendants had appeared and filed their written statement and subsequently, also filed an application under Order 7 Rule 11 for rejection of the plaint on the ground that for the same property, there has been previous litigation between



the parties and title and possession of the Defendants have been upheld but said petition for rejection of plaint was dismissed by the trial court where suit is pending.

10. For better appreciation, Sections 192 and 193 of the Indian Succession Act are quoted below:-

“192. Person claiming right by succession to property of deceased may apply for relief against wrongful possession. —(1) If any person dies leaving property, moveable or immoveable, any person claiming a right by succession thereto, or to any portion thereof, may make application to the District Judge of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

(2) Any agent, relative or near friends, or the Court of Wards in cases within their cognizance, may, in the event of any minor, or any disqualified or absent person being entitled by succession to such property as aforesaid, make the like application for relief.

193. Inquiry made by Judge.- The District Judge to whom such application is made shall, in the first place, examine the applicant on oath, and may make such further inquiry, if any, as he thinks necessary as to whether there is sufficient ground for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a suit, and that the application is made *bona fide*.”

11. While rejecting the miscellaneous case of the



appellant, the District Judge has wrongly construed and misread provision of Section 192 of the aforesaid Act. The language and wordings of Section 192 is very clear and explicit according to which a person who claims the property by way of succession on strength of clear Title, he can make an application under Section 192 of the Act for protecting his lawful possession over the property or recovery of possession from wrongful possession by another person having No Title over the property, as such, the petition filed by appellant was maintainable and could not have been dismissed in limine.

12. Accordingly, the order dated 04.04.2010 passed in Miscellaneous Case No.2/2012 by the District Judge, Buxar is set aside and the matter is remitted back to the District Judge, Buxar to decide the matter afresh after hearing all the parties in accordance with law. It is made clear that I have not expressed any opinion on the merit of the case and same is to be heard and decided by the court below on its own merit

13. This miscellaneous appeal stands disposed of.

14. Let the L.C.R. be returned forthwith to the court below.

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.07.2019
Transmission Date	NA

(S. Kumar, J)

