

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.268 of 2015

Binda Prasad @ Binda Prasad Choudhary Son of Late Ganpat Sah Resident of Mohalla Main road Sitamarhi Ward No. 17 Post +Police Station+ District - Sitamarhi.

... .. Appellant/s

Versus

1. Mahendra Prasad son of Sri Binda Prasad Choudhary Resident of Mohalla Main Road Sitamarhi Ward No. 17, Post +Police Station +District Sitamarhi.
2. Smt. Shanti Devi wife of Sri Binda Sah
3. Birendra Kumar Son of Sri Binda Sah
Both Resident of Mohalla Main Road Sitamarhi, Ward No. 17, Post+Police Station +District - Sitamarhi.
4. Anuradha Kumari wife of Sri Birendra Kumar Resident of Mohalla Main road Sitamarhi, Ward No. 17, Post +Police Station +District Sitamarhi.

... .. Respondent/s

with

Miscellaneous Appeal No. 265 of 2015

Anuradha Kumari Wife of Sri Birendra Kumar Resident of Mohalla - Main Road Sitamarhi, Ward No. 17, Post+P.S.+Dist.-Sitamarhi

... .. Appellant/s

Versus

1. Mahendra Prasad Son of Sri Binda Prasad Choudhary, Resident of Mohalla Main Road Sitamarhi, Ward No. 17, Post+P.S.+Dist.-Sitamarhi
2. Binda Prasad Son of Late Ganpat Sah
3. Smt. Shanti Devi Wife of Sri Binda Sah
4. Birendra Kumar Son of Sri Binda Sah All resident of Mohalla Main Road Sitamarhi, Ward No. 17, Post +Police Station +Dist.-Sitamarhi

... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 268 of 2015)

For the Appellant/s : Mr.Anil Kumar, Adv
For the Respondent No.1: Mr.Ajeet Narayan Sinha, Adv
: Mr. Kumar Kaushlendra, Adv

For Respondent Nos.2 to 4:

(In Miscellaneous Appeal No. 265 of 2015)

For the Appellant/s : Mr.Anil Kumar, Adv
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 25-02-2019

Heard learned counsel for the parties in both the
appeals.



2. Respondent No.1-Mahendra Prasad brought Partition Suit No.184 of 2013, claiming partition of his 1/4th share in joint family property, disclosed in Schedule-I of the plaint. The property consists of about 1.80 decimals agricultural land and a house in Sitamarhi town on 5.04 decimals of land. The suit was against the parents and brother-Birendra Kumar. Wife of Birendra Kumar, namely Anuradha Kumari is also a party to the suit for the reason that according to plaintiff, a portion of the suit house had been sold away to Anuradha Kumari by registered sale deed dated 27.04.2013 by Binda Prasad, the father of the plaintiff.

3. Appellant-Binda Prasad and other respondents filed their written statement, wherein Binda Prasad claimed the suit property as his personal property. However, it is not disputed that entire Schedule-I property was of ancestor-Ganpat Sah and after death of Ganpat Sah, the joint property was partitioned among five sons of Ganpat Sah and his wife, vide document of partition at Annexure-B to the counter affidavit. Binda Prasad is one of the sons of late Ganpat Sah.

4. The plaintiff filed a petition before the learned trial court for appointment of receiver on the ground that the defendants especially the appellant is going to alienate the joint family property and is damaging it otherwise also. The learned court



below considered that even the joint family business known as New India Electronics has been transferred in the name of Anuradha Kumari and now it is known as Anuradha Electronics which shows that the appellant is going to grab the interest of the plaintiff in the suit property. Hence, Mr.Ashok Kumar Singh No.2, an advocate was appointed as a receiver by the impugned order dated 25.06.2015.

5. The appellant has challenged the appointment of an outsider as receiver on the ground that the law does not permit so. According to learned counsel, there is no dispute by the plaintiff that the suit property is a joint family property. If the property is joint family property, there is unity of title and possession between the parties. Sub-Rule 1 of Order 40 of the Code of Civil Procedure empowers the court to appoint receiver, where the court finds it just and convenient. However, Sub-Rule 2 of Rule 1 is rider which reads as follows:

“1. Appointment of receivers.-

(2) “Nothing in this rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.”



6. In a partition suit, since there is unity of title and possession, the plaintiff has no present right to remove the defendants by order of injunction or otherwise. Moreover, the learned court below has appointed an outsider as receiver which amounts to removal of the appellant and other co-sharers from possession of the land for the present, which is not permissible in law.

7. Learned counsel for the respondent No.1 submits that since the respondent is not residing at the village, his interest should be protected, failing which the appellant and other co-sharers taking advantage of the absence of respondent No.1 may dispose of or create encumbrance on the suit property.

8. Since the appointment of receiver of an outsider is not consistent with law, hence, the impugned order to the extent of appointment of an outsider of her family as receiver stands set aside and the matter is remitted back to the learned court below to appoint, if situation so warrant, a family member as receiver who shall give proper and true account to the court. The learned court below would be at liberty to appoint the receiver by rotation from amongst the family members and the receiver so appointed shall give proper and true account to the court.



9. It has been informed that the learned court below has already directed the parties to maintain status quo in respect of the suit property so far alienation is concerned. Hence, no order need be passed in the matter of alienation by the parties since the learned court below has already taken care of.

10. In the result, this miscellaneous appeal stands allowed with aforesaid direction.

11. The learned court below is expected to decide the disposal of the suit at the earliest preferably within six months. The parties shall fully cooperate in the matter.

12. Miscellaneous Appeal No.265 of 2015 brought by Anuradha Kumari against the same impugned order, wherein she has supported the case of the present appellant, also stands disposed of accordingly.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.02.2019
Transmission Date	NA

