

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.652 of 2018

1. Brijmohan Prasad @ Brijmohan Prasad Sah and Ors Son of Suryanarayan Sah,
2. Rekha Devi, Wife of Brijmohan Prasad, Both residents of Mahila College Road, Madhubani, P.S. and District- Madhubani.
3. Chulhai Sah @ Chulai Sah, S/o Late Subai Sah @ Suba Sah, Resident of Suratganj, Mahila College Road, Madhubani, P.S. and District- Madhubani.

... .. Appellant/s

Versus

1. Laxmi Sah and Ors S/o Late Subai Sah,
2. Raju Sah and
3. Santosh Sah, Respondent 2 & 3 S/o Late Bhola Sah, All residents of Suratganj, Mahila College Road, Madhubani, PS and District- Madhubani.
4. Ramvilas Sah, S/o Late Nathuni Sah, Resident of Suratganj, Mahila College Road, Madhubani, P.S. and District- Madhubani.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anil Kumar Jha, Sr. Adv & Mr.Sanat Kumar Mishra, Adv
For the Respondent/s	:	Mr.Baidya Nath Thakur, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 18-11-2019

Heard learned counsel for the parties.

This application has been filed for setting aside the order 08.06.2018 passed by learned Sub-judge-VI, Madhubani in Title Suit No. 300 of 2013 by which injunction petition filed by plaintiffs-respondents under Order 39 Rule 1 and 2 of CPC has been dismissed and learned court below has directed to maintain *status quo* till disposal of the suit.

Plaintiff has filed Title Suit No. 300 of 2013 stating therein that there was oral partition among the family on



15.02.1999 and members of joint family agreed that if any member wants to alienate any property then co-sharer or co-owner will have preferential right to purchase said property, however, in spite of agreeing with said condition which was one of the term and conditions of amicable partition, defendant no. 3 sold out Schedule-4 and 8 of the partitioned property to defendant nos. 1 and 2.

It is an admitted fact that defendant nos. 1 and 2 are in possession of Schedule-4 property which is a shop as a tenant. They purchased the property along with Schedule-8 property from a family member to whom said share was allocated in said partition.

An injunction petition was filed by the plaintiffs to restrain the parties from making any construction or changing the nature of suit property or to forcibly dispossess them from part of the suit properties which was in their possession and the court below passed order of *status quo* restraining all the parties from either alienating or changing the nature of property or dispossessing the plaintiffs in which they are in possession.

After hearing learned counsel for the appellant and learned counsel for the respondent, it is an admitted fact that the appellants being tenant of Scheduled-4 property which is a shop



and have purchased it from defendant no. 3 and has become the owner of the property.

The claim of the plaintiffs is of preemption and preferential right of purchase of the Schedule-4 property. However, the court below has granted *staus quo* over the suit land and appellants pray that the shop is in a dilapidated condition and requires immediate repair, as such the order of *status quo* over Schedule-4 property be set aside, however, the order of *staus quo* shall remain operative over the remaining part of the suit property.

Appellant is permitted to carry out necessary repair work over Schedule-4 property which is a shop in which he is in possession prior to filing of the suit as tenant.

With said modification, this miscellaneous appeal is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	7.2.2020
Transmission Date	NA

