

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.688 of 2013

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Satyendra Prasad @ Chunchun Singh @ Satyendra Krishnan, Son of Shri Arjun Prasad Singh, Resident of Village - Katauna, P.S. - Katarisarai, District - Nalanda. At Present Mohalla - Gadhpur, Ward No. 27, Nagar Nigam, Biharsharif, P.S. - Bihar, P.O - Biharsharif, District - Nalanda.

... .. Appellant/s

Versus

1. Kameshwar Prasad Sharma, son of Late Jethu Singh, Village Post - Pawa, P.S. - Dipnagar, District – Nalanda
.....Defendant – Respondent 1st set
2. Ved Prakash Singh, Son of Gokaran Singh @ Jagarnath Singh, Resident of Mohalla - Kila Gadhpur, Town And Post. - Biharsharif, P.S. - Bihar, District - Nalanda.
..... Defendant ...Respondent 2nd set

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Appearance :

For the Appellant/s	:	Mr. Nawal Kishore Singh Mr. Sanjeeb Kumar Sanju Mr. Pratik Kumar Mr. Jitendra Nath Tiwary, Advocates
For the Respondent no.1 :		Mr. Amar Nath Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 16-08-2019

Heard learned counsel for the appellant and learned counsel for respondent no.1.

The present miscellaneous appeal has been filed against the order dated 1.8.2013 passed by Sub-Judge, VII, Nalanda, Biharsharif in title suit no.236/2012 by which he has rejected the application of the appellant – plaintiff filed under Order 39 Rule 1 and 2.

Appellant – plaintiff had filed a suit for declaration of his title and confirmation of possession over the suit land which



was purchased by him in the year 1973 by a registered sale deed and subsequently part of the land was purchased by oral sale and after that he came in possession over his purchased land and same was demarcated and a boundary wall was raised over his purchased land.

It has further been contended on behalf of the appellant – plaintiff that defendant no.2 who is the vendor, sold the land to defendant no.1 in the year 1993 of the remaining part of said plot in which plaintiff has been shown as boundary raiyat, however, in the year 2008, defendant no.2 further sold the same land which was sold to him in the year 1973 by oral sale and as such, plaintiff has filed a suit for declaration of his title and confirmation of possession over his purchased land by registered sale deed as well as by oral sale.

During pendency of suit, plaintiff filed a petition for grant of injunction under Order 39 Rule 1 and 2 of the CPC, however, the same was rejected by the court below. It is submitted on behalf of the learned counsel for the appellant that the respondents have admitted the possession of the plaintiff over the suit land by showing him as boundary raiyat in the sale deed of 1993 sold to defendant no.1, as such, he has a *prima facie* case and balance of convenience also lies in his favour



and he will suffer irreparable loss if he is forcibly dispossessed from the suit land, as such, during pendency of suit, injunction ought to have been granted to appellant.

After hearing the parties, this Court finds that the appellant is in possession over the suit land and he has a *prima facie* case which is to be adjudicated by the trial court as such, it is a case in which the trial court ought to have granted injunction and restrain defendants from interfering with peaceful possession of plaintiff over the suit land.

Accordingly, the order dated 01.08.2013 passed by the trial court is set aside and the petition filed by appellant under Order 39 Rule 1 and 2 is allowed. The trial court is directed to decide the title suit within a period of one year from the date of receipt/production of copy of order passed by this Court.

This miscellaneous appeal is allowed.

Let the LCR be returned forthwith to the court below.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.10.2019
Transmission Date	NA

