

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.117 of 2018

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Sunil Kumar Singh S/o Late Banke Bihari Singh, resident of Village - Bara,
P.S. - Naubatpur, District - Patna presently residing at Samadar Path, Park
Road, Kadamkuan, District – Patna. ... (Defendant 1st set) ... Appellant/s
Versus

1. Smt. Manju Singh, wife of Sri Purushottam Singh resident of village -
Baluan, Post - Baluan, Police Station - Maner, District – Patna.
....Plaintiff/Respondent 1st set
2. Smt. Manjusha Singh @ Kanchan Bala, wife of Sri Shailendra Kumar
Singh, resident of D/75, P.C. Colony, Kankarbagh, District Patna.

... Defendant 2nd Set / ... Respondent 2nd set

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Appearance :

For the Appellant/s : Mr. Neeraj Kumar
For the Respondent/s : Mr. Sanjay Kumar Verma

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 15-07-2019

Heard.

2. This miscellaneous appeal has been filed on behalf of the appellant/defendant 1st party for setting aside the order dated 2.2.2018 passed by learned sub-judge 1st, Patna in title partition Suit No.293 /2015 by which the learned court below has passed an order to maintain status quo during pendency of suit on a petition filed by plaintiff under Order 39 Rules 1 and 2 of CPC.

3. Plaintiff had filed a partition suit claiming 1/3rd share in joint family property as detailed in schedule I of the plaint. It was further stated in the plaint that father and mother of plaintiff and defendants had acquired land and house at Mohalla - Park Road, Kadamkuan, Patna through registered



sale deed dated 12.01.1979 and partition took place between them by compromise decree passed by learned Additional Sub-Judge, IV, Patna in Title Partition Suit No.333 /1983 in which 1/3rd share was allotted to Preman Devi (mother) and 2/3rd share was allotted to Banke Bihari Singh (father). Both have died.

4. Defendant no.1 is not giving any account of income of entire joint family property and usurping the joint family properties to the exclusion of plaintiff. It is further stated that Smt. Preman Devi (mother of the parties) executed a deed of gift dated 26.6.2000 in favour of Smt. Manju Singh (plaintiff) with respect to 1/3rd of her share in suit property. Preman Devi died in the year 2009.

5. Defendant no.1 filed written statement stating therein that defendant no.1/appellant/Sunil Kumar Singh constituted joint family with his parents who had two daughters and one son, namely, Manju Singh (plaintiff), Smt. Manjusha Singh (defendant no.2) and Sunil Kumar Singh (defendant no.1). The property was purchased from joint family fund and being a son, he acquired right in the joint family property by birth and as such decree in partition suit is not binding upon him as he was not granted any share in said partition of 1983



although he had equal share being a co-parcener in joint family property as such judgment and decree based on compromise passed in tittle partition suit No. 333 of 1983 is illegal and not binding upon him.

6. Plaintiff field a petition under Order 39 Rules 1 and 2 of CPC to restrain defendant by temporary injunction from transferring, selling, alienating and encumbering the suit property in any manner and to maintain status quo as plaintiff got knowledge that defendant no.1 is contemplating to sell the suit property. Defendant no.1 filed a show cause to the injunction petition that plaintiff has got no *prima facie* case and plaintiff will not suffer any irreparable loss if injunction is refused. Defendant no.1 came to know about the alleged deed of gift executed by mother of parties in favour of plaintiff for which he has filed a title suit being T.S. No.670 of 2013 to declare the gift deed as void and inoperative in which plaintiff has appeared. On basis of said gift deed, plaintiff has got her name mutated in respect of 1/3rd of suit property. Defendant no.1 is in exclusive possession over the suit property and has exclusive ownership. There is no unity of title or possession between the plaintiff and defendants.

7. The trial court by a cryptic order dated 2.2.2018



has directed the parties to maintain status quo over the suit property during pendency of suit without any finding in respect of whether plaintiff has a prima facie case, balance of convenience leans in his favour and he will suffer irreparable loss if injunction is not granted, as such, the order passed by the trial court to maintain status quo during pendency of suit is not sustainable and is, accordingly, set aside.

8. The matter is remitted to the trial court to decide the injunction petition filed on behalf of plaintiff for grant of temporary injunction after hearing plaintiff and defendant no.1 as defendant no.2 has not appeared and pass appropriate order giving specific findings with respect to three essential ingredients for grant of injunction, i.e., prima facie case, balance of convenience and irreparable loss while granting or rejecting injunction petition filed by plaintiff.

9. Till the injunction petition is decided by the trial court, *status quo* shall be maintained.

10. This miscellaneous appeal is disposed of.

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.10.2019
Transmission Date	NA

(S. Kumar, J)

