IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.842 of 2018
In
CIVIL MISCELLANEOUS JURISDICTION No.880 of 2018

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Poonam Sinha @ Sohanti Devi wife of Anil Kumar Sinha, r/o Mohalla Khajpura, P.O.-B.V. College, PS Airport, District Patna.

... ... Appellant/s

Versus

1.The ASU Construction Through Its Managing Partner Sanjay Kumar Sinha son of Late Sabhapati Singh, having its office at Bichli Gali, Gola Road, P.S Danapur, District Patna.
2.Sanjay Kumar Sinha, son of late Sabhapati Singh, r/o Mohalla Bichli Gali, Gola Road, PS Danapur, District Patna.
3.Bharat Bhushan son of Dewki Lal, Resident of Mohalla Gola Road, PS Danapur, District Patna.
4.Manjula wife of Umesh Prasad, r/o Mohalla-Pali, P.S. Bihta, District Patna, presently residing at E/405, ASU Enclave, Arra Garden Road, P.S Airport, District Patna.
5.Jivendra Kumar son of Late Ram janam Sinha, r/o Mohalla-D/104, PC Colony, PS Kankarbagh, District Patna, presently resident of A/304, Dhanesh Datt Apartment, Gola Road, P.S Rukanpura, District Patna.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Jagjit Roshan, Adv
For the Respondent/s : Mr.Pandit Jee Pandey, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT
Date : 13-05-2020

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed on behalf of plaintiff-appellant for setting aside the judgment and order dated 10.04.2018, passed by Sub-Judge-XI, Patna, passed in Title Suit No. 107 of 2015 by which the learned trial court has rejected the petition filed by plaintiff for grant of temporary injunction during pendency of suit as well as refused to extend the order dated 29.02.2016 of status quo granted earlier till the

appearance of defendants.

3. Plaintiff has filed Title Suit in the court of sub-judge, Patna, stating therein that she is absolute owner of the land measuring 10 decimals as detailed in Schedule-1 of the plaint and had executed a development agreement dated 21.06.2004 (Annexure-3) with defendants for construction of multi storeyed building and as per development agreement plaintiff as a land owner was to get 42 per cent and 58 per cent was the share of Developer. It is further stated that plaintiff also being one of the five partners of defendant Developer she is entitled for 1/5th of Developer share.

4. As per development agreement, dated 21.06.2004 (Annexure-3), 12 feet wide passage was left by plaintiff in the Northern side of said plot for egress and ingress for the other adjacent plots as detailed in Schedule-II of the plaint which is West to the Schedule-I plot and as per subsequent development agreement(Annexure-4) an amount of Rs. 17 Lacs and two flats with parking space was to be given to plaintiff in lieu of aforesaid 12 feet wide passage in the multistoreyed building to be constructed over Schedule-II lands. Several development agreement was executed between the land owners of adjacent lands (Schedule-II lands) and defendant no. 1 ASU

Constructions.

5. It is further stated in the plaint that as per partnership deed 22.08.2005 each partner had to invest 17 Lacs as initial capital, however, defendants agreed that plaintiffs due of Rs. 17 Lacs will be accepted as her initial capital for construction of project over Schedule-I and Schedule-II land and the same was accepted by the plaintiff and construction work on Schedule-I and Schedule-II land got completed.

6. It is further alleged that other partners (defendants) did not invest any capital in the project and defendants have sold the flats of developer share which has generated huge profit from which subsequent development agreement was entered with other land owners which are Schedule-III, Schedule-IV, Schedule-V and Schedule-VII of the plaint. Defendant firm has generated income of Rs. 7 Crores from said investment and same belongs to plaintiff being the sole investor which is kept in the bank account of defendant firm as detailed in Schedule-VI of the plaint.

7. Plaintiff has peaceful possession over the flats of defendant firm i.e. Flat No. 104A, 304A, 201A, 202A and 402A of Dhanesh Apartment at Arrah Garden Road, Patna and Flat No. E/405 of Ganga Jamuna Apartment at Gola Road, Patna, as

detailed in Schedule-VII of the plaint and plaintiff being sole investor is entitled to remain in possession over entire immovable property as detailed in Schedule-IV and Schedule-VII and also has exclusive right over Rs. 7 Crores (Schedule-VI) kept in the bank account of defendant firm.

8. Written statement has been filed on behalf of defendants in which they have denied claim of plaintiff. Partnership firm having five partners including plaintiff is admitted and in terms of registered partnership dated 22.08.2005 which was made effective from 11.11.2003 (the date of earlier unregistered partnership deed), investment was to be made in equal shares and profit and loss was also to be shared equally.

9. Development agreement dated 21.06.2004 (Annexure-3) was executed between plaintiff as land owner and defendant firm with respect to Schedule-I land measuring 10 decimals and interms of which 42 per cent share was of land owner(plaintiff) and 58 per cent was developer shares in which also plaintiff had 1/5th share being one of the partners. Prior to execution of this agreement one agremenet was entered between the parties without any date but after execution of this agreement previous agreement became redundant. Several agreements were made with adjacent land owners and

partnership firm submitted a joint map for construction of multistoreyed building on those lands in the name of ASU Enclave

10. There is no clause in the development agreement dated 21.06.2004 regarding 12 feet wide passage left by plaintiff in lieu of which she is entitled to get Rs. 17 Lacs and 2 flats with parking space. Plaintiff has not made any investment in the partnership firm. Out of income of partnership firm, plaintiff has taken her entire share and developer share of Schedule-I land is in possession of plaintiff. Flat No. E-107 and E-108 has been transferred by the plaintiff in the name of her daughter without making any payment. Firm has already sold Flat No. 104A to Saurav Kumar and Flat No. 202A to Smt. Manju Devi and Nishant Rai as per previous agreement.

11. It has been further contended by the defendants that plaintiff has filed the suit to avoid accounting and if accounting is done plaintiff will be liable to refund more than Rs. 2 Crores to the firm.

12. Whole claim of plaintiff is based upon an undated agreement as contained in Anneuxre-4 and according to plaintiff same was entered between the parties subsequent to agreement dated 21.06.2004 (Annexure-3) to compensate the land

owner(plaintiff) for providing 12 feet passage to be used for egress and ingress for adjacent plots, however, as per defendants it was prior to Annexure-3 and was replaced by (Annexure-3) as such became redundant. Annexure-4 agreement which is undated and unregistered does not refer to any previous agreement dated 21.06.2004 (Annexure-3) and being supplementary agreement to said agreement as claimed by plaintiff. In agreement dated 21.06.2004 (Annexure-3) which is admitted by both the parties and in said agreement also plaintiff has agreed in Clause-i that "it is agreed by land owner (plaintiff) that if developer (defendant) extends the project in the nearby plots then land owner (plaintiff) would not object if path is made through this plot", and subsequently defendants agreed to pay Rs. 17 Lacs and two flats with parking space is required to be proved by plaintiff in trial.

13. The claim of plaintiff is based upon monetary benefit accrued to her on the basis of agreement as contained in Annexure-4 of the year-2004 for which she has filed suit in the year 2015. The claim at present appears to be hypothetical and imaginary and dependant upon the genuinity and correctness of Annexure-4, which has to be established in course of trial and no case for grant of temporary injunction is made out as plaintiff

is neither going to suffer any irreparable loss nor balance of convenience leans in her favour.

14. After hearing the parties and considering the materials available on record and perusing the order passed by trial court, this Court does not find any illegality or irregularity in the order passed by the trial court requiring any interference by this Court, accordingly, the present miscellaneous appeal is dismissed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	19.02.2020
Uploading Date	13.05.2020
Transmission Date	NA