

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.931 of 2019

In
Civil Writ Jurisdiction Case No.12284 of 2019

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Rajiv Kumar Agrawal Son of Late Arvind Kumar Agrawal Resident of
Mohalla- Mungeriganj, P.s. Begusarai Town, P.O. Anchal, Sub-Division,
Sub Registry, District- Begusarai.

... .. Appellant/s

Versus

1. The State of Bihar Through Principal Secretary, Department of Prohibition, Excise and Registration, Government of Bihar, Old Secretariat, Patna, Bihar.
2. The Principal Secretary Department of Registration, Government of Bihar, Old Secretariat, Patna. Bihar.
3. The Excise Commissioner-cum-IG Registration Government of Bihar, Old Secretariat, Patna, Bihar.
4. The Assistant Inspector General Registration Munger.
5. The Colector-cum-Registrar Begusarai.
6. The Sub-Registrar Begusarai.
7. Sanjiv Kumar Agrawal Son of Late Arvind Kumar Agrawal Resident of village - Mungeriganj, Ward no. 32, P.S. and District- Begusarai.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjeev Ranjan, Advocate
For the Respondent/s : Mr. Pushkar Narain Shahi, AAG-6

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 24-07-2023

1. Heard learned counsel for the parties.

2. The instant letters patent appeal has been
preferred against the order dated 12.7.2019 whereby the



learned Single Judge was pleased to dismiss CWJC No. 12284 of 2019 filed by the appellant.

3. The case of the appellant in brief is that he filed Title (Partition) Suit no. 188 of 1997 which is pending in the Court of learned Single Judge, Begusarai. The private respondent executed a sale deed with respect to the land which was subject matter of the partition suit. The defendants appeared in the suit and filed their written statement. An application for injunction filed by the appellant in the suit was rejected. In the appeal (M.A. no. 16 of 1999) preferred by the appellant against the order rejecting his injunction petition, this Court by its order dated 23.2.1999 (Annexure-2) was pleased to dismiss the appeal however with the observation that in case of urgency the parties may file a petition for permission to transfer part of the suit property and the transfer can be made only after getting such permission.

4. The appellant submits that on a petition under Order 7 Rule 11(d) of Civil Procedure Code being filed by one of the defendants, the learned Sub-Judge, Begusarai was pleased to reject the plaint against which the First Appeal (F.A. no. 475 of 1999) was preferred in this Court. In the First Appeal, the appellant preferred an application for grant of



injunction restraining the respondents from alienating the suit properties and this Court was pleased to pass order dated 27.7.2000 in F.A. no. 475 of 1999 observing that the parties are directed to transfer the suit property in case of urgency only after obtaining permission of this Court.

5. The respondent preferred L.P.A no. 1212 of 2000 against the order dated 27.7.2000 passed in F.A. no. 475 of 1999. This Court was pleased to dismiss the said L.P.A by order dated 6.9.2000.

6. It is further case of the appellant that the private respondent filed a petition in F.A. no. 475 of 1999 seeking permission to sell part of the suit property which was allowed by order dated 18.1.2002 on the condition that the same was subject to the final outcome of the appeal which should be incorporated in the sale deed itself as a condition for sale. F.A. no. 475 of 1999 was allowed on 1.4.2010 and the case was remitted to the trial Court to decide the suit on merits.

7. It is the case of the appellant that inspite of the order dated 23.2.1999 passed in M.A. no. 16 of 1999, the private respondents executed sale deed on 26.6.2010. The appellant filed a contempt petition (M.J.C. no. 4879 of 2012)



alleging violation of the directions of this Court contained in order dated 23.2.1999 in M.A. no. 16 of 1999. This Court by its order dated 13.2.2013 disposed of M.J.C. no. 4879 of 2012 directing the petitioner (appellant herein) to bring the facts to the notice of the learned trial Court whereafter the concerned defendants shall be given an opportunity to file their show cause and if it is found that the suit land had been alienated without seeking permission of the Court, the learned trial Court would proceed to pass appropriate orders in accordance with law. According to the appellant, a petition under Order XXXIX Rule 2A read with section 151 of the Civil Procedure Code was filed in the learned trial Court but no order has been passed thereon and once again the private respondent has executed another sale deed with respect to the suit property.

8. The learned Single Judge in his order dated 12.7.2019 took note of the fact that the title suit was still pending and observed that if any interim order of injunction was being violated by any of the parties to the suit, the appellant had a remedy under the provisions of the Civil Procedure Code. As such the writ petition was dismissed.

9. Having heard learned counsel for the parties



and having perused the material on record, bereft of unnecessary details, it may be stated here that pursuant to the judgment dated 1.4.2010 of this Court in F.A. no. 475 of 1999, the appeal was allowed, the impugned order set aside and the matter was remitted back to the Court below directing it to proceed in accordance with law. Thus Title (Partition) Suit no. 188 of 1997 stood restored and is pending today in the Court of learned Sub-Judge, Begusarai. At this stage it may also be noted that by order dated 23.2.1999 passed in M.A. no. 16 of 1999, this Court had directed that in case of urgency, the parties may file a petition for permission to transfer part of the suit property and transfer can be made only after getting such permission.

10. In view of the aforesaid facts it may be noted here that the case of the appellant is that the defendants in the title suit have violated the order passed in Misc. Appeal and for the same MJC no. 4879 of 2012 was filed in this Court which was disposed of directing the appellant to bring to the knowledge of the learned trial Court whereafter the learned trial Court was to proceed in accordance with law after giving notice to the defendants. The appellants admit to have moved the learned trial Court but on the ground that no order was



passed thereon, has filed the instant writ application for directing the Sub-Registrar, Begusarai not to register the sale deed in view of the order of injunction passed by the learned trial Court.

11. In the opinion of this Court, there being no dispute with respect to pendency of Title (Partition) Suit no.188 of 1997 in the learned trial Court, so far as injunction or violation thereof is concerned, the appellant has a remedy available to him under the Civil Procedure Code.

12. The Court further finds that while there are two plaintiffs and eight defendants in the title suit, (copy of plaint is Annexure-1 to the writ application), the writ application and the instant appeal having been filed for relief associated with the said title suit, yet the appellant has chosen not to make one of the plaintiffs and seven of the defendants as parties in the writ application as also in the instant appeal.

13. In view of the aforesaid facts and circumstances of the case, the Court finds no merit in the instant appeal and the same is dismissed with cost of Rs. 5000/- which shall be deposited by the appellant with the Legal Services Authority at Begusarai and a copy of the receipt shall be filed in the partition suit.



14. Let a copy of this order be communicated to the learned trial Court in Begusarai, where Title (Partition) Suit no.188 of 1997 is pending.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	N/A
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Transmission Date	N/A

