

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.682 of 2018

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Navin Kumar Sharma, son of Arun Kumar Sharma, resident of village-Shiogarh, District-Patna

... .. Appellant/s

Versus

1. Kumar Harendra, son of Sri Chandrika Prasad Sharma
2. Smt. Aparna, wife of Kumar Harendra

... .. Respondent/s

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Appearance :

For the Appellant	:	Mr. Satyendra Kumar, Advocate Mr. Praveen Kumar, Advocate
For the Respondent/s	:	Mr. Madhukarsh Singh, Advocate Mr. Amritanshu Udhav, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL ORDER

18 16-06-2025 Heard learned counsels for the both the respective parties.

2. The present memo of appeal is filed against the order dated 19.03.2018 passed in T.S No. 86 of 2016 thereby the learned Sub-Judge, Paliganj, Patna allowed the injunction petition filed by the plaintiffs/respondents under order 39 Rule 1 and 2 and under Section 151 of C.P.C and by which the appellant/defendent were restrained from transferring, alienating or disposing the plaintiff/respondents from the suit property till the disposal of the suit.

3. Learned counsel for the appellant submits that the relief sought in the said Title Suit No.86 of 2016 involves mainly (1) for declaration of right, title, interest and possession



over Schedule V of the suit land (2) for declaring the Registered Sale Deed dated 06.10.2016 executed by Defendant No. 1 (Akhilesh Kumar Singh, Son of Brijnandan Singh) in favour of Defendant No. 2 (Appellant) and Defendant No. 3 (Utpalkant Ganesh, Son of Laxmikant Sinha) as illegal null and void and not binding on respondents with regard to Schedule - V of the suit land (3) for ad-interim injunction on Schedule-V property from transferring the same during pendency of suit.

4. He further submitted that though the relief for ad interim injunction was sought in the said Title Suit No. 86 of 2016 also to the extent of Schedule -V of the suit property but the respondent again filed separate application dated 02.11.2016 filed under order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure seeking grant of injunction with respect to Schedule – V. He further submitted that the said Order dated 19.03.2018 passed in the said Title Suit No.86 of 2016 without considering the show cause dated 13.09.2017 filed on behalf of Akhilesh Kumar Singh is wholly without jurisdiction and has been granted in excess of the provision of law under which the relief was sought by the respondents. There was absolutely no occasion and reason for the respondents to have sought temporary injunction in the said title suit from the learned court



below but with the help of inherent power of the court the said order has been obtained which is also in excess of the pleadings made in the petition dated 02.11.2016 in which the prayer for injunction was restricted to Schedule-V of the suit as given in para 1 and in para 28 of the said petition dated 02.11.2016 but the dispute herein is restricted to Schedule IV B of the plaint.

5. Learned counsel for the appellant submitted that the Appellant is not associated with the issue involved in the title among (1) Patai Kuwar. (2) Smt. Kanti Devi and (3) Sri Akhilesh Kumar Singh and is the vendee to Sri Akhilesh Kumar Singh who has acquired the right, title, interest and possession over and above the land sold to the instant Appellant. He further submitted that in the stated fact of the case the impugned order contained in Order dated 19.03.2018 passed in Title Suit No. 86 of 2016 is illegal, arbitrary and unjustified so far as the Appellant is concerned. It is made clear that the Appellant who is a vendee has nothing to do with the personal dispute of the three namely (1) Patai Kuwar, (2) Smt. Kanti Devi and (3) Sri Akhilesh Kumar Singh. In the circumstance situation the said order dated 19.03.2018 passed in Title Suit No. 86 of 2016 is unsustainable in the eye of law and fit to be set aside /quashed by this Hon'ble Court in the dispensation of justice.



6. Learned counsel for the respondent submitted that on going through contents of the impugned sale deed dated- 6.10.2016 it transpired that the defendant no.1 has got the sale deed purportedly executed in favour of the defendant nos. 2 and 3 with regard to lands in dispute of Schedule-V of the plaint illegally and without authority and without payment of entire consideration money in of hot haste manner when he lost the 144 Cr.P.C proceeding before the S.D.M, Paliganj in order to overawe the respondent to succumb to his illegal demands. He further submitted that from the facts stated above it is abundantly clear that Akhilesh Kumar Singh the defendant no.1 had no right title and interest in and possession over the lands in dispute of Schedule- V of the plaint as such he had no title and authority to execute the impugned sale deed dated-06.10.2016 in favour of the defendant nos. 2 and 3 with regard to the lands of Schedule- V of this plaint and therefore the impugned dated 06.10.2016 is absolutely illegal, without authority and null and void and not binding on the plaintiffs.

7. Learned counsel for the respondents submitted that respondents have got absolute title to and exclusive possession over the land in suit of Schedule -V of the plaint and have been mutated in the state Sarista in respect thereof and have been



paying rent and getting receipt in lieu thereof. He further submitted that if the defendants nos. 2 and 3 are not restrained from interfering with the possession of respondents over the suit lands of Schedule-V of the plaint, they shall forcibly dispossess the respondents from the suit land by dint of their sheer power and strength.

8. On perusal and scrutinizing all the materials available on the record, it is evident to note that though the relief for ad interim injunction was sought in the said Title Suit No. 86 of 2016 also to the extent of Schedule -V of the suit property but the respondents again filed separate application dated 02.11.2016 filed under order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure seeking grant of injunction with respect to Schedule – V, whereas, the learned trial Court granted injunction on the whole title suit property including schedule-I, IIA, IIB, III, IV, IVA IVB, and V. The injunction granted by learned trial Court vide order dated 19.03.2018 on suit property described in Schedule-I, IIA, IIB, III, IV, IVA, IVB be considered as ineffective and is further modified to the extent that the party shall not transfer/alienate the suit property mentioned in the Scheduled-V. The Trial Court shall try to dispose of the suit as expeditiously as possible.



9. Thus, this Miscellaneous Appeal is disposed of with
the aforesaid direction.

(Ramesh Chand Malviya, J)

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