

Vishwanath Prasad and ors. Vs. Vinay Kumar Sinha and ors.

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SooperKanoon Citation : sooperkanoon.com/124397

Court : Patna

Decided On : May-01-1998

Judge : Gurusharan Sharma, J.

Appeal No. : Appeal from Original Order No. 180 of 1996

Appellant : Vishwanath Prasad and ors.

Respondent : Vinay Kumar Sinha and ors.

Prior history : Gurusharan Sharma, J. 1. Partition Suit No. 353 of 1994 the plaintiffs filed a petition for interim injunction to restrain the defendants first and second parties from alienating and/or making new constructions over Schedule I property. 2. By the impugned order dated 29.3.1996 the prayer was allowed and the defendants first and second parties were restrained either from alienating or making new constructions or demolishing existing structures over Schedule I property, during pendency of the su

Judgement :

Gurusharan Sharma, J.

1. Partition Suit No. 353 of 1994 the plaintiffs filed a petition for interim injunction to restrain the defendants first and second parties from alienating and/or making new constructions over Schedule I property.

2. By the impugned order dated 29.3.1996 the prayer was allowed and the defendants first and second parties were restrained either from alienating or making new constructions or demolishing existing structures over Schedule I property, during pendency of the suit.

3. The defendants second party have preferred this appeal against the said order, under Order XLIII Rule 1(r) of the Code of Civil Procedure.

4. I find that at the time of admission of the instant appeal under Order XLI Rule 11 of the Code the following interim orders pending the Appeal was passed by this Court:

During the pendency of the appeal, the appellants, if so required, may make construction over the suit land but they will not execute any transfer deed.

5. After hearing the parties at length and perusing the records, I modify the impugned order and dispose of this appeal in terms of the said interim order dated 18.11.1997 and thereby during pendency of the suit, the defendants second party-appellants herein shall be entitled to make new constructions over Schedule I lands, but without any claim of equity and they shall not transfer the same.

6. However, in case of urgent necessity, the defendant No. 6 shall be at liberty to file a petition for permission to transfer any part of the said property within his share, which may be considered and disposed of by the trial Court on its own merits and in accordance with law.

7. The parties herein undertake to cooperate in smooth disposal of the suit and in the facts and -circumstances of the case, the trial Court is directed to dispose it of expeditiously.

8. This appeal is, accordingly, disposed of with the aforesaid direction and modification in the impugned order so far as the defendants and party are concerned. No costs.