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Court : Patna

Decided On : Apr-22-2010

Judge : Mungeshwar Sahoo, J.

Appellant : Binod Kumar @ Binod Kumar Singh

Respondent : Most. Sumitra Devi and ors.

Disposition : Appeal dismissed

Judgement :

Mungeshwar Sahoo, J.

1. Heard the learned Counsel for both the parties on the interlocutory application, i.e., I.A. No. 5477/07 at Flag 'A'.

2. This interlocutory application has been filed by the appellant under Order 39 Rule 1 and 2 of the Code of Civil Procedure on 25.9.2007 praying therein to restrain the respondents from alienating, encumbering the suit property and also restraining to receive compensation in land acquisition case and also from changing the nature and character of the suit land.

3. The plaintiff appellant filed this appeal against the Judgment and decree passed by the court below on 28.3.2007 in Title Suit No. 147/92 dismissing the plaintiff's suit. The plaintiff appellant filed the aforesaid suit for declaration of the two

registered gift deeds executed by the defendants as collusive and void and thereafter for partition of the suit property to the extent of 1/12.

4. The learned Counsel for the appellant submitted that there was no partition between the plaintiffs defendants and, therefore, the gift deeds executed in favour of the defendants by Shahdeo Singh is void and the learned court below had wrongly held that there had been previous partition between the parties. According to the learned Counsel there is presumption of jointness and the onus was on the respondents to prove that there had been partition. The learned Counsel further submitted that during the pendency of this appeal if the respondents are not restrained from alienating the suit property the appellant shall suffer serious loss and irreparable injury.

5. On the other hand, the learned Counsel for the respondents submitted that the learned court below has categorically given a finding that there had been already partition between the parties by metes and bounds and thereafter the gift deeds had been executed. Moreover, the injunction application had been filed in 2007 and still now after three years the appellant is unable to show that the appellants are trying to sell the property.

6. From perusal of the impugned Judgment it appears that the learned court below has considered many registered documents such as sale deeds in which there are admissions of the parties to the suit/their ancestors that there had been already partition by metes and bounds. The registered sale deed Ext. F/1 is of the year 1987 which was executed by father of the appellant in which he admitted that there had been partition in 1967. Another sale deed Ext.F/2 dated 28.7.1973 was also executed by father of the plaintiff with other brothers in which also there is admission that there had been partition. Likewise there are so many other documents in which the father of the appellant had admitted about the previous partition. Many property had been soled by him. The learned court below has also considered that there had been inter se transaction.

7. In view of the above facts it appears that there is prima facie finding against the appellant that there had been already partition in the family and, therefore, the suit had been dismissed. The learned court below has also found that the properties

which were sold by the father of the appellant have been left out from the Schedule of the plaint. The injunction application has been filed more than 2 1/2 years ago but the appellant has failed to show that during this period the respondents have in any way changed the character of the suit land. It is the case of the respondents that they have already received the compensation amount awarded in the land acquisition proceeding and, therefore, there was no question for injunction arose.

8. In view of the above consideration and the finding of the learned court below and the fact that the injunction application is of the year 2007 I find that the appellant has got no prima facie case for the grant of injunction. In view of the above facts I also find that the balance of convenience is also not in favour of the appellant. In view of the above finding there is no question of serious loss and irreparable injury to the appellant.

9. In the result, I find no merit in this injunction application and, accordingly, this injunction application being I.A. No. 5477/07 is rejected.

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