
(2013) 04 PAT CK 0034

In the Patna High Court

Case No : Miscellaneous Appeal No. 450 of 2010

Jagannath Prasad Sinha @ Jagarnath Prasad Singh

APPELLANT

Vs

Pinky Chaudhary and Others

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r), 151

Citation : (2013) 2 PLJR 695

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Shakti Suman Kumar, Mr. Rajesh Ranjan-1 and Mr. Uma Kant Shukla, for the Appellant; Ved Prakash Srivastava, for the Respondent Nos. 1, 2 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—The present appeal under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (hereinafter referred to as "C.P.C.") has been filed against an order dated 13.4.2010 passed by Sri Om Prakash Singh, Sub Judge-8th, Muzaffarpur (hereinafter referred to as "Sub Judge"), in Title Suit No. 521 of 2007. By the said order learned Sub Judge has rejected the petitions filed under Order 39 Rule 1 & 2 and petition u/s 151 C.P.C. on behalf of the plaintiff/appellant. The plaintiff/appellant had prayed for restraining the defendant 1st party from interfering with the possession of the plaintiff over the suit land and also for maintaining status quo till disposal of the suit.

2. Short fact of the case is that the plaintiff/appellant had filed a suit vide Title Suit No. 521 of 2007 for declaration of his exclusive Title over the suit property described in Schedule-I of the plaint and for declaration that the sale deeds dated 9.8.2007 executed by defendant no. 5 in the name of defendant no. 1 and 2 in respect of suit properties described in Schedule II & III of the plaint as void, illegal and inoperative. It was claimed that late Nand Prasad Sinha (father of the

plaintiff) had two sons namely, late Baidya Nath Prasad Sinha and the plaintiff. Father of the plaintiff died in or about 1949 leaving behind his widow namely, Smt. Dhanwanti Devi, the plaintiff and the defendant 2nd party as his sole heirs. Subsequently, mother of the plaintiff died in the year 2000. In the year 1968 the plaintiff purchased properties mentioned in Schedule-I out of his own income. However, since the plaintiff was engaged as lecturer, his elder brother late Baidyanath Prasad Sinha was offered to attend registration office and to get requisite sale deed in respect of land mentioned in Schedule-I. However, his elder brother Baidyanath Prasad Singh also got his name included as co-purchaser in the sale deed. The plaintiff/appellant claimed to be in exclusive possession of the suit property. On 23.7.1984 plaintiff's brother Baidyanath Prasad Singh signed a memorandum of private partition along with plaintiff whereby entire suit land along with other properties were partitioned in between the plaintiff and his brother late Baidyanath Prasad Singh. According to the plaintiff the entire suit property remained under exclusive ownership and possession of the plaintiff. As per the case of plaintiff/appellant on 9.8.2007 respondent no. 5 (son of his brother late Baidyanath Prasad Singh) fraudulently executed sale deeds in favour of respondent no. 1 and 2, and thereafter, respondent 1st set started interfering with the possession of the plaintiff. Accordingly, suit was filed in which on 14.3.2008 an injunction petition was filed. The plaintiff/appellant further has stated that respondent 1st set had filed a writ petition vide Cr.W.J.C. No. 121 of 2007 for restoration of their possession over the Schedule II and Schedule III land which was dismissed on 4.7.2008. But subsequently, respondent 1st set forcibly took possession of Schedule II and Schedule III property of the suit on 9.7.2008. Thereafter, the plaintiff/appellant besides lodging criminal case also filed a petition on 15.9.2008 before the court below for mandatory injunction seeking restoration of possession. However, by the impugned order the learned Sub Judge has rejected the same, which has been impugned in the present appeal.

3. Sri Uma Kant Shukla, learned counsel for the appellant submits that though there was specific case for grant of injunction as well as for restoring possession in favour of the plaintiff/appellant, the learned Sub Judge without any cogent reason has rejected the same. To corroborate his submission learned counsel for the plaintiff/appellant has relied on a single bench order of this court reported in Savitri Devi Vs. Rajo Devi and Another,

4. Sri Ved Prakash Srivastava, learned counsel for respondent no. 1, 2 and 4 has argued that the plaintiff/appellant has not stated true fact of the case in the present memo of appeal. He further submits that since there was no prima facie case in favour of the plaintiff/appellant, nor balance of convenience was in favour of the plaintiff/appellant, the learned Sub Judge has rightly rejected the injunction petition filed by the plaintiff/appellant. He has further argued that unless the sale deeds which were duly registered are not declared finally as void it will be presumed that prima facie case was in favour of defendants/respondents. The sale deeds were executed by respondent no. 5, who was

having right, title over the suit property and after the sale deeds were executed the respondent 1st set had come in peaceful possession over the suit property.

5. In this case a detailed counter affidavit has been filed by respondent no. 1, 2 and 4 and it has been disclosed that father of plaintiff and respondent 2nd party namely late Nand Prasad Singh died in the year 1949 leaving behind his wife Dhanwanti Devi and two sons i.e. the plaintiff and Baidyanath Singh. At the time of death of their father plaintiff was aged about two years whereas father of respondent no. 5 namely Baidyanath Singh was aged about 18 years. Out of joint family fund Baidyanath Singh had purchased suit land vide registered sale deed dated 9.10.1972. In the said sale deed plaintiffs name was included as co-purchaser. Even jamabandi was created in the name of both brothers. In revisional survey khatian which was published in 1981 names of both the brothers i.e. Baidyanath Singh and plaintiff/appellant were recorded as joint owners having equal share. In the year 1984 a partition took place in which Baidyanath Singh was allotted half share from South in the disputed plot vide registered award of partition dated 23.8.1984 in which entire joint family land including the disputed land were partitioned amongst the brothers with a provision for maintenance of widow mother, who died in the year 2000. In the year 2005, Baidyanath Singh died leaving behind respondent 2nd party as his legal heirs, who sold their half share in the disputed land through two registered sale deeds both dated 9.8.2007 in the name of respondent no. 1 and 2. However, after the death of father of respondent 2nd set, the plaintiff/appellant started fabricating papers and also started various legal proceedings and succeeded in getting suit land mutated in his name in new jamabandi no. 45/25 which was on protest subsequently cancelled by the District Magistrate vide order dated 13.12.2010. The respondents in its counter affidavit have asserted that the plaintiff/appellant in the present memo of appeal has annexed an unregistered purported memorandum of partition dated 23.7.1984 as Annexure-1 to the memo of appeal but they have not whispered about the registered award of partition dated 23.8.1984. On aforesaid facts it has been asserted that even in the suit there is no likelihood of passing judgment and decree in favour of the plaintiff/appellant. There is no prima facie case or balance of convenience in favour of the plaintiff/appellant and accordingly, the learned Sub Judge by an elaborate order has rightly rejected the petitions filed by the plaintiff/appellant.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record particularly the impugned order. The learned Sub Judge has elaborately discussed the case of the parties for coming to the conclusion in the injunction matter in the suit. Before the court below firstly a petition under Order 39 Rule 1 & 2 of the C.P.C. was filed on 14.3.2008 for restraining the defendant 1st party from interfering with the possession of the plaintiff over the suit land till disposal of the suit as well as for maintaining status quo. Thereafter, defendant 1st set filed show cause and prayed for rejecting the injunction petition on the ground that they were rightful owner as well as they were in possession over the suit properties, which they had purchased on the

basis of two registered sale deeds dated 9.8.2007. After filing of the show cause before the court below wherein defendant had claimed their possession over the suit property, the plaintiff filed a petition on 15.9.2008 u/s 151 C.P.C. for delivery of possession of the suit property in his favour. The learned Sub Judge while examining the matter had felt it difficult to come to a definite conclusion as to on the date of filing of the injunction petition who were in peaceful possession over the suit property but at the time of hearing of injunction petition it was evident that suit property was in possession of respondent 1st set, and as such, he has not committed any error in rejecting both the petitions. So far as Savitri Devi Case (Supra) is concerned, on which heavy reliance was placed by learned counsel for the appellant, the court is of the opinion that in the said case it was evident that after filing of the injunction petition, the plaintiff of the said case was dispossessed, and as such, this court had allowed the plaintiffs petition and remitted back the matter to the court below. Accordingly in the present case the plaintiff/appellant may not get any help from Savitri Devi Case (Supra). Moreover, fact remains that in the present case first of all it has to be seen as to whether registered sale deeds executed by defendant 2nd set in favour of respondent no. 1 and 2 are void or not. So long the sale deeds in question are in existence, the same will be deemed as legal and valid, and as such, the court is of the opinion that learned Sub Judge has rightly rejected the petitions filed by the plaintiff/appellant, which requires no interference. The appeal stands dismissed without any cost.