
(2003) 08 PAT CK 0110
In the Patna High Court
Case No : Misc. Appeal No. 232 of 2000

Raghubir Prasad and Another	Vs	APPELLANT
Amir Sah @ Amar Sah and Others		RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

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

Citation : (2003) 4 PLJR 406

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Sheojag Choudhary and Mahesh Pd. No. 2, for the Appellant;
Sachidanand Sinha and Rewati Kant Raman, for the Respondent

Judgement

P.K. Deb, J.—Heard the learned Counsel for the parties.

2. This appeal has been preferred against the order dated 9.2.2000 passed by Sub-Judge IInd Bhojpur, Arrah in Title Suit No. 324 of 1999 whereby and whereunder a petition filed from the Plaintiffs/Respondents under Order 39, Rules 1 and 2 read with Section 151 of the CPC is allowed by restraining the Defendants/ Appellants from alienating the immovable property and further a restraint has been put on the Defendants/Appellants in withdrawal of the Bank amount on the basis of the will being probated by the common ancestor.

3. The admitted position remains that the will had not yet been probated and no letters of administration has been granted as yet. In that way no action can be taken either by Bank or any local authorities on the basis of any averments made in favour of any beneficiary in that will. In that way even if no restraint order is there the Bank authority cannot act on the will unless the will is probated. Be it what it may I do not find that there is any scope of passing any restraint order in respect of alienation. Regarding immovable property both Plaintiffs and the Defendants are co-sharers and they got their right absolutely over their share of the immovable property. In that way no restraint can be put on any co-sharer regarding alienation etc. with regard to their shares. In that way I do not find

that the injunction order has been passed validly in the eye of law. Balance of convenience, prima facie case and irreparable loss have not been considered by the learned court below in its proper perspective.

4. In that way the impugned order is hereby set aside with the observation made above.