
(2007) 04 PAT CK 0079
In the Patna High Court
Case No : MA No. 376 of 2003

Vyasji Dubey and Others

APPELLANT

Vs

Shri Rangji Dubey and Others

RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Citation : (2007) 4 PLJR 1

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Judgement

Rekha Kumari, J.—This appeal is directed against the order dated 30.8.2003 passed by the Sub-Judge V, Siwan in T.S. No. 323/2002 whereby the learned Sub-Judge has passed interim injunction directing the defendants/ appellants not to dispossess the plaintiffs (respondents) from the suit lands and not to construct the house over the suit lands till the disposal of the suit. It appears that the plaintiffs/respondents had filed T.S. No. 323/2002 as against the appellants/ defendants for declaration that the plaintiffs have right, title and interest over the suit land and for declaring the sale deeds executed by defendant No. 9 in favour of defendants No. 1 to 8 as void and inoperative.

2. the case of the respondents/plaintiffs is that one Jagannath Dubey had two wives. From the first wife he got two issues Vyas Jee Dubey (defendant No. 9) and Kunti Devi. The plaintiffs are the heirs of Jagannath Dubey from the second wife. It is further stated that in the life time of their father defendant No. 9 took his 1/3rd share in the property and separated himself by metes and bounds from his father and finally settled in her Sasurai Jagannath Dubey then executed a registered deed of gift with respect to his land measuring 5 bigha 3 katha 9 dhurs and 5 dhurkis described in Schedule I of the plaint to his second wife and put her in possession. The said Jagannath Dubey died and later on his wife also died and entire property under gift came in possession of the plaintiffs/respondents and they had been coming in possession of the said land. It was further alleged by the plaintiffs/respondents that defendant No. 9 since

separated in the life time of his father had no title interest or possession over the suit property, but in spite of that he executed the deed of sale with respect to 9 kathas of land (Schedule 2) out of the lands, mentioned in Schedule I property which was covered under the deed of gift in favour of the defendants No. 1 to 3 without any consideration and the purchasers thereafter became adamant to take forceful possession of the land and build their house over the said land. Hence, they filed a petition under Order 39 Rule 1 and 2 for restraining the defendants/appellants from disturbing their possession as also from making any construction over the suit land.

3. The case put forward by the appellants/defendants before the lower court at the time of hearing the Injunction matter is that never any deed of gift executed by Jagannath Dubey and the story of defendant No. 9, his being separated from his father in his life time after taking 1/3rd share in the joint family property is false. In fact a family partition took place only one year back and hence defendant No. 9 rightly executed the deed of sale of the property which had fallen in his share during family partition. Therefore, the purchasers are the rightful owner of the land and they have been put in possession. Hence, there was no merit in the injunction petition filed by the plaintiffs/respondents.

4. Learned lower court after hearing the parties decided the matter mainly on the ground that the registered deed of gift was dated 5.11.1988 and the said deed of gift was never challenged by defendant No. 9. Therefore, the plaintiffs/respondents had prima facie case, balance of convenience also lies in their favour and he further opined that no loss would be caused to the defendants if the injunction is granted against them and he, accordingly, allowed the petition directing the defendants not to dispossess the plaintiffs from the suit land and not to construct house over the suit land till the disposal of the suit.

5. Assailing the above order, learned counsel for the appellants submitted that the learned court below has not considered any document in support of the prayer made by the plaintiffs/respondents. He has not given any opinion as to the fact that under whose possession presently the property lies. He also did not enquire as to whether the defendant had the knowledge of the existence of the deed of gift to challenge the said deed by defendant No. 9. The court below also did not enquire whether on the basis of the deed of gift, any mutation in the name of the wife or the children of the plaintiff took place and whether any rent was paid by them showing their possession. Therefore, without considering any documents in support of the possession of the properties the learned court was not right in allowing the prayer of the plaintiffs/respondents on the point who was prima facie in possession of the land.

6. I also find from the perusal of the entire order that the court has not reconcluded any satisfaction on the point who was prima facie in possession of the land. Therefore, the learned court below was not justified in holding that the balance of convenience lies in favour of the plaintiffs/respondents or that they would suffer irreparable loss. The impugned order thus is not fit to be sustained.

7. It is, accordingly, set aside and the matter is remanded back to the lower court to consider the matter afresh and pass orders in accordance with law. Till disposal of the matter, status quo shall be maintained by both the parties.