

In the Court of Additional District Judge-III, Buxar

Title Appeal-35/2012

CIS NO-199/2013

03.10.2019

Parivi filed on behalf of both sides.

Heard both sides on petition dated 19.01.2018 filed on behalf of respondent under Order XXXIX rule 1, 2 and section 151 C.P.C. and the rejoinder dated 25.01.2018 filed on behalf of appellants.

Learned counsel for the respondent submitted that the present appeal has been preferred against the judgment dated 18.05.2012 and decree dated 25.05.2012 passed by learned Sub-Judge-III Buxar, in Title Suit no. 101/1993 and during the pendency of appeal appellant no. 6 Anil Kumar Rai filed a petition on 05.07.2017 for admitting the mutation orders as an additional evidence and that petition has been filed without verification and has not been supported by an affidavit and thereafter on 11.10.2017 the appellant Anil Kumar Rai sold the property in dispute by way of four registered sale deeds without permission of the court. It has also been submitted that during the pendency of Title Suit no. 101/1993 father of appellant no. 6 also sold 2 acre 42 decimal land on 23.08.2007. He further submitted that appellant sold the land in excess of his share and concealed the same from the court and now

the appellants have got no interest in the appeal and still appellants are bent upon to sold the land to other persons. He further submitted that the judgment and decree passed by learned lower court is still in existence and on the point of possession the plaintiff/appellant lost their case right from the Anchal Office to the Hon'ble High Court and thus there is prima-facie case and balance of convenience in favour of respondents and he also submitted that the execution of sale deed causes irreparable loss to the respondents. Hence prayed to grant temporary injunction and to restrain the appellants from selling the land in dispute to other persons during the pendency of appeal.

On the other hand learned counsel for the appellant submitted that respondent has already filed another Title Suit vide T.S. no. 280/2007 which is pending in the court of learned Sub-judge-VIII, Buxar and the respondents wrongly submitted that on the point of possession the appellant lost the case up to the Hon'ble High Court rather the real fact is that in Mutation Revision case no. 115/2007-08 the learned Collector, Buxar passed an order on 30.05.2012 in favour of appellants and that order has been challenged by the respondents before Hon' ble High Court in C.W.J.C. No.16228/2012 and on 02.05.2016 that C.W.J.C. has been withdrawn to file a case before Hon'ble Bihar Land Tribunal and the Hon'ble High Court provided a period of eight weeks to file appropriate petition before Bihar Land Tribunal but the respondents never filed any petition till date before Bihar Land Tribunal. Lastly he submitted that the appellants are sole legal heir of Khationi Raiyat, Bhagawati Kuer and they have been in possession of the

suit land right from the beginning and the prima-facie case and balance of convenience lies in favour of appellants, hence prayed to reject the petition dated 19.01.2018 filed by respondent.

Having heard the submission of the parties and from perusal of record it is apparent that the present petition has been filed on 19.01.2018 by the respondent and the petition has been pressed after lapse of about more than a period of one and half year and in para no. 4 of the petition the respondents admitted that the appellant have some share in the disputed land and he sold some land in excess of that share. Further it is also apparent from the judgment of the learned lower court that the learned lower court relied on the aspect of possession and considered the mutation order passed in favour of defendants but now the mutation orders stands in favour of appellants and the C.W.J.C No. 16228 of 2012 filed by the respondents, against the orders passed in Mutation Revision by learned Collector, Buxar in favour of appellants, has been withdrawn by the respondents and the order passed by the learned Collector in Mutation Revision case no. 115/2007-08 is still in existence thus the prima-facie case never stands in favour of respondents. However mutation order has nothing to do with the title of the suit property. So far as balance of convenience is concerned both the parties have their claim and counter claim over the property of Most. Bhagawati Kuer and under the facts and circumstances of the case the respondents themselves admitted the share of appellants in the disputed property, so there is no question of balance of convenience in favour of the respondents. It is also apparent from the petition of

the respondents that they claimed that appellants sold the land in excess of their share. But any such sale deed would be void ab-initio so no irreparable loss would be caused to the respondents in this way. It is also essential to mention here that the present petition has been pending for a period of more than one and half year and no any allegation is there by the respondents against the appellants regarding any alienation at the hands of appellants nor there is any allegation regarding threat by the appellants to dispossess the respondents or of otherwise causing injury to the respondents in relation to any property in dispute in the suit. From the above discussion it is above board that the petition dated 19.01.2018 filed by the respondents sans merit and as such the same is hereby rejected.

However the appellants are hereby directed to argue their case on the next date fixed positively.

Put up on 15.10.2019 for further proceeding.

Dictated

Additional District Judge-III,

Buxar

03.10.2019