

In the Court of Additional District Judge-I, Buxar
Present:-Manoj Kumar-II (Additional Sessions Judge-1st)

Title Appeal no. 35/2012

Nilesh Kumar Rai and other Vs. Musmat Phulbaso Kuwar and others.

Page no. 1/3

PRESENT : MANOJ KUMAR-II

Additional Sessions Judge-1st, Buxar

Learned counsel for the appellants/plaintiffsSri, Dina Nath Singh, Advocate

Learned counsel for the defendants/respondentsSri, Ramakant Pandey, Advocate

ORDER

17.05.2024 The respondent pressed his application dated 22.06.2023 under order 39 rule 1 and 2 r/w-section 151 CPC. The rejoinder of it has been filed by the appellants on 10.07.2023. It is stated in the application that this appeal is preferred against (Title Suit no. 101/1993) judgment and decree dated 18.05.2012. The father of the appellants filed the suit in respect of suit property mentioned in schedule two of the plaint claiming to be successor of Bhagawati Kuwar w/o- Haridwar Rai and sought the possession, if they found dispossess, but the title suit was dismissed and the plaintiff/appellant could not obtained the possession. It is further alleged that the appellants/plaintiffs have no concerned with Musmat Bhagawati Kuwar or her property mentioned in the schedule, and during the pendency of this appeal appellant no.1 started selling the property and execut a sale deed on 19.05.2023 to the different persons who are Bhu Maffaiya (land grabber). It is established through the pedigree of the defendants/respondents that the property mentioned in schedule 2 is ancestral property of the defendants and they are in possession of it, after the death of Bhagawati Kuwar. The appellants have accepted in the deposition that they have no documentary prof that they are successors of Bhagawati Kuwar. The appellants 1 to 6 have executed a sale deed on 19.05.2023 and 11.10.2017 without permission of the court in respect of the suit property and they have executed sale deed of 5 acre 25 decimal out of total 6 acre 57 decimal and the appellants have

no interest in the land while the defendants/respondents are in possession of the land and a Pakka Makan is constructed on it and purchaser of the appellants are approaching for mutation. The appellants have filed objection against the application dated 22.06.2023 that the application of the respondents/defendants is not maintainable and it has been filed on wrong facts. The plaintiffs/appellants filed a suit for declaration that they are only legal heir of Bhagawati Kuwar in respect of the property mentioned in schedule 2 and she was last member of Salik Rai and Sumeshwar Rai's family and the plaintiffs/appellants are son of Haridwar Rai's sister. Haridwar Rai is husband of Bhagawati Kuwar. During the course of deposition it is established that they are heir of Bhagawati Kuwar. Respondents are stranger to Bhagawati Kunwar and injunction petition dated 19.01.2018 has been rejected on 03.10.2019 and it is established that Indarashani Devi was daughter of Durga Rai and they have proved their relation as per section 50 of Evidence Act. If the respondents succeeded in the appeal all sale deed would be void under the provision of lis pendis and prayed for rejected the application.

Heard both sides and perused the case record.

From perusal of the record it appears that respondents/defendants filed their WS in the suit and sought dismissal of the suit. There is no counter claim or counter appeal of the defendants that they are legal heir of Bhagwati Kuwar. It appears that the defendants claim the land being successor of a common ancestral Chintamani Rai, five degree up from Bhagawati Kuwar. It appears that the suit will only decide whether the plaintiffs are entitled to succeed in the property of Bhagawati Kuwar or not. No issue was framed as to whether the defendants/respondents are entitled to the property of Bhagawati Kuwar or not? Moreover, the temporary injunction petition of the

In the Court of Additional District Judge-I, Buxar

Present:-Manoj Kumar-II (Additional Sessions Judge-1st)

Title Appeal no. 35/2012

Nilesh Kumar Rai and other Vs. Musmat Phulbaso Kuwar and others.

Page no. 3/3

respondent has been rejected by this court on 03.10.2019. Hence, the new application of injunction is not maintainable. Moreover, the parties are not interested to argue the matter for final disposal while this appeal is pending since 2012. In these facts and circumstances, this court is not gone through the merit of the case. Hence, this injunction petition of the respondent dated 22.06.2023 is rejected. Both parties are directed to remain present for final argument in this appeal. Put up this case on 06.06.2024 for arguments.

Dictated

Sd/-Manoj Kumar

Additional District Judge-1st, Buxar