

In the Court of Principal District Judge, Munger
Miscellaneous Civil Appeal No. 08 of 2024

Uma Devi Vs Smt Abnindra Kumar Choudhary & other

06.06.2025

O R D E R

1) This Misc. Civil Appeal has been preferred by the appellant / plaintiff namely Uma Devi, being aggrieved and dissatisfied with the order dated 02.02.2024 passed in T.S. No. 04 of 2011 whereby and whereunder the Learned Court dismissed the application of the appellant / plaintiff under Order 39 Rule 1 & 2 read with section 151 C.P.C. praying for interim injunction *qua* the respondents / defendants.

2) The brief facts of the appellant / plaintiff's case is that the property namely *“the land admeasuring about 18¾ decimals equal to 6 Katha at mauja Laxmanpur, Thana No. 26, Tauji No. 4882, Jamabandi No. 10, Ward No. E, Survey Sheet No. 26, P.S. Jamalpur, District Munger, (mentioned in Schedule I) originally belonged to the appellant / plaintiff. That she was in need of money for the marriage of her daughter and to purchase ornaments for which she negotiated with the defendant Jasoda Devi (now deceased) and it was agreed that appellant / plaintiff will execute Sale Deed in favour of the defendant for consideration amount of Rs. 12000/- and it was also agreed that if appellant / plaintiff re-pay the consideration amount within six years then defendant will return her land through registered Sale Deed. This transfer was a type of mortgage of the land. After this, appellant / plaintiff executed her land on 29.01.1976 vide Sale Deed no. 453/76 to the defendant and she received Rs. 7000/- out of Rs. 12000/- from the defendant. That appellant / plaintiff*

delivered the possession of the land to the defendant. On the same day, an 'Ekrarnama' (Deed of Agreement) was also executed vide Deed no. 454/76 to the effect that if the appellant / plaintiff re-pay the consideration amount within six years i.e. by 28.01.1982, the defendant will return the land through registered Sale Deed. Before the expiry of the agreement date, appellant / plaintiff requested to receive the amount and execute Sale Deed in her favour and also hand over the possession of the land for which she purchased stamp papers worth Rs.800/-. Since the defendant was her 'Gotni' so she did not disbelieved her. As the date of returning of land as per Ekrarnama was near to expire, the defendant started delaying on one pretext or other and after four month of the expiry of the date, the appellant / plaintiff had to return the non-judicial stamp paper, purchased by her. That the appellant / plaintiff also sent Pleader notice but no reply of the same was received, so this suit has been filed to redeem the suit land by declaring the conditional Sale Deed dated 29.01.1976, a Deed of Mortgage. During the course of trial, the appellant / plaintiff came to know that the original defendant (now deceased) had executed a Sale Deed in favour of her son Anadi Kumar Choudhary, so the appellant / plaintiff has also prayed for declaring the said Sale Deed dated 20.11.1993 as forged, fabricated document.

3) The original defendant Jasoda Devi appeared and filed her written statement stating that the appellant / plaintiff was in need of money not for the marriage of her daughter rather her husband, who was posted as Nazir in Anchal Office, Jamalpur, defalcated the Govt. money and to compensate the same, the appellant / plaintiff had no option but to sell the suit land. That the appellant / plaintiff and defendant, who are close relatives agreed that the appellant /

plaintiff will execute a Sale Deed of the suit land to the defendant for consideration amount of Rs.12000/-. Accordingly, Sale Deed was executed and the appellant / plaintiff handed over the right, title and possession of the suit land. She also got the registration slip of the Sale Deed. The further case of the defendant is that due to near relationship, defendant has also executed a separate registered agreement Deed on the same day on the request of the appellant / plaintiff, giving her an option to get back the suit land from the defendant within six years by a separate Sale Deed to be executed by the defendant in favour of the appellant / plaintiff on the consideration amount of Rs. 12000/- but the appellant / plaintiff never returned the said consideration money within stipulated period and thus she waived her right as per agreement appellant / plaintiff never approached the defendant for receiving the amount of Rs. 12000/- and hand over the possession of the suit land.

(4) After the death of Jasoda Devi, her heirs were made party to the suit. That the defendant no.1(B) / respondent No. 2 Anadi Kumar Choudhary @ Munna Kumar Choudhary appeared in the suit and has filed his written statement stating almost same facts as stated in the written statement of his late mother Jasoda Devi. He has also stated that appellant / plaintiff has got full knowledge regarding the Sale Deed executed in his favour as the defendant Jasoda Devi (since deceased) has executed the suit land in the year 1993 in favour of her two sons – Abnindra Kumar Choudhary and Anadi Kumar Choudhary. The appellant / plaintiff has already lost her right to repurchase the suit land after 28.01.1982. Hence prayed to dismiss the suit with cost.

5) Thereafter the appellant / plaintiff preferred an application dated

20.12.2023 under Order 39 Rule 1, 2 read with section 151 C. P. C. wherein it has been submitted that earlier her petition for injunction has already been rejected and she is filing the present petition under changed circumstances. That the respondents/ defendants are trying to get forceful possession over the suit property. That the original defendant had fraudulently executed a Sale Deed in favour of her son namely Anadi Kumar Choudhary who is arrayed as defendant No. 1B / respondent No. 1 on substitution after the death of defendant Jasoda Devi. That the respondents / defendants tried to take forceful possession during the pendency of the suit for which a proceeding u/s 144 Cr P C was initiated on 11.11.2023 on the basis of non-F.I.R. No. 02/2023. That the stipulated period of 144 Cr P C. proceeding is 60 days which is going to be completed, so necessity for injunction arose. Therefore, the appellant / plaintiff has prayed for a temporary injunction thereby restraining the respondents / defendants from taking forceful possession of the suit property.

6) The respondent No. 2 / defendant No. 1B filed reply to the above said injunction petition stating therein that the instant petition is not maintainable as previously similar type petition under Order 39 rule 1,2 read with section 151 C.P.C. of the appellant / plaintiff was rejected by the Ld. Trial Court on 09.09.2019 and the appellant / plaintiff had filed a Civil Miscellaneous Appeal No. 18 of 2019 against this order which was also rejected on 18.11.2022 by Ld. District Judge, Munger. That the appellant / plaintiff has filed the instant suit after 35 years of execution of Sale Deed dated 29.01.1976. That since the appellant / plaintiff has no prima facie case, balance of convenience also leans in favour of this respondent / defendant, so no loss will be caused if temporary

injunction is not granted. That against the order dated 18.11.2022 the appellant / plaintiff has not preferred any appeal or revision, as such the order dated 18.11.2022 has become final. That only to delay the disposal of the suit, the appellant / plaintiff has filed the present petition. Hence, it is prayed to reject the petition of the appellant / plaintiff dated 20.12.2023.

7) The Ld. Trial Court after hearing the submissions of the respective Ld. Counsels and after perusing the record of the case, not finding the trinity of the Principles namely prima facie case, irreparable loss or balance of convenience in favour of the appellant / appellant / plaintiff, rejected the above stated application under Order 39 Rule 1, 2 read with section 151 C P C vide order dated 02.02.2024 (hereinafter 'the impugned order').

8) The Ld. Counsel for the appellant / plaintiff submits that the impugned order as passed by the Ld. Trial Court is bad in law as well as on facts. That the impugned order is based on conjectures and surmises. That the Ld. Trial Court should have considered the assertions of the appellant / plaintiff. That at this stage the Ld Trial Court only has to ascertain as to whether the three principles of prima facie case, irreparable loss and damage as well as balance of convenience is made out in favour of the appellant / plaintiff or not. That the Deed of Agreement dated 29.01.1976 executed by the original defendant Jasoda Devi (now deceased) in favour of the appellant / plaintiff clearly shows that the status of Sale Deed dated 29.01.1976 is just a usufruct mortgage. The possession of the suit property had or has not been given to the defendants. That on 11.11.2023 the respondent No. 2 / defendant 1B again disturbed the appellant / appellant / plaintiff as he tried to cultivate the suit land for which a

proceeding u/s 144 Cr P C was initiated. As such the appellant / plaintiff has got good prima facie case for injunction. Further that the balance of convenience also leans in favour of grant of injunction and the appellant / plaintiff will suffer irreparable loss if the respondent No. 2 /defendant 1B succeed in taking forceful possession of the suit land. Therefore, the appellant / plaintiff had a good prima facie case in her favour and the balance of convenience also leans in her favour. That if injunction is not granted to the appellant / plaintiff, it will cause irreparable loss to them. The impugned order as passed by the learned Trial Court is illegal and as such, the same is fit to be set aside.

9) The appellant / appellant / plaintiff has also filed a petition u/s 5 of the Limitation Act for condoning the delay in filing the Misc. Civil Appeal and submitted that she applied for certified copy of the order dated 02.02.2024 on 12.02.2024 and the same was supplied to her on 24.05.2024. Further she is very old lady aged about 80 years and suffering from disease. Thereafter the memo of appeal was prepared by her Ld. Counsel and she filed the appeal on 02.06.2024. Hence, it is prayed to condone the delay and further prayed to admit the appeal.

10) On the other hand the Ld. Counsel for the respondent No.1 / defendant No. B vehemently opposed the prayer of the appellant / plaintiff for condoning the delay and submitted that the appellant / plaintiff failed to explain about the delay correctly.

11) He further strongly opposed the prayer for temporary injunction and submits that once the Court has rejected the petition for temporary

injunction and same has not been challenged before Hon'ble High Court Patna, at present no new ground has been given by the appellant / plaintiff, as such the petition dated 06.02.2024 is fit to be rejected with cost.

12) Considering the submissions of the respective Ld. Counsel, the record and the petition u/s 5 of the Limitation Act, the delay in filing the present appeal is hereby **condoned and this Miscellaneous Civil Appeal is Admitted.**

13) I have considered the record of the case and heard the submissions of respective Ld. Counsels.

14) It is noted that *in re: Maria Margarida Sequeira Fernandes Vs Erasmo Jack De Sequeira (Dead) Through LRS, (2012) 5 SCC 370*, it was observed that:

“69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

84. In order to grant or refuse injunction, the judicial officer or the

judge must carefully examine the entire pleadings and documents with utmost care and seriousness.

86. Ordinarily, three main principles govern the grant or refusal of injunction,

(a) prima facie case;

(b) balance of convenience; and

(c) Irreparable loss

Which guide the court in this regard.

In the broad category of prima facie case, it is imperative for the Court to carefully analyse the pleadings and the documents on record and only on that basis the Court must be governed by the prima facie case. In grant and refusal of injunction, pleadings and documents play vital role”.

15) On perusal of the record it seems that in Title Suit No. 04/2011 the appellant / plaintiff has prayed to redeem the suit land by declaring the conditional Sale Deed dated 29.01.1976 as a Deed of Mortgage and further declaring the said Sale Deed dated 20.11.1993 as forged, fabricated document. From perusal of the record it is admitted that there was agreement of sell between the parties followed by a Sale Deed which was executed by the appellant / plaintiff in favour the original defendant Jasoda Devi on 29.01. 1976 ad also handed over the possession of the suit land to the defendant. That on the same date an agreement was also executed by the original defendant Jasoda Devi (now deceased) that if the appellant / plaintiff returns the consideration money of Rs. 12000/- before 20.01.1982 in that circumstance the defendant will return the suit land by executing a Sale

Deed of the said suit land. That the appellant / plaintiff has brought this Title Suit No. 04/2011 after lapse of about 30 years from the agreement deed to return the suit land i.e. 28.01.1982. Further the appellant / plaintiff has herself stated in her plaint that the possession of the suit land was handed over to the original defendant but in her injunction petition she has stated that the the defendants are trying to take forceful possession of the suit land. It is also noted that previously the plaintiff/appellant application under Order 39 Rule 1 and 2 read with section 151 C.P.C. was rejected by the Ld. Trial Court vide order dated 09.09.2019 and further the Civil Miscellaneous Appeal No. 18/2019 against the said order was also rejected vide order dated 18.11.2022.

16) Therefore, considering the submissions of the respective Ld. Counsels, the record of the case and in the totality of the facts and circumstances of the case as well as in the light of law laid down in the aforesaid judgment, I do not find any merit in the instant appeal and therefore, the same is **hereby rejected.**

Dictated

(ALOK GUPTA)
District Judge, Munger
06.06.2025