(2007) 02 PAT CK 0164

Patna High Court

Case No: Miscellaneous Appeal No. 130 of 2000

Anadi Kumar Das and Others		APPELLANT
	Vs	
Khagindra Kumar Das		RESPONDENT

Date of Decision: Feb. 19, 2007

Acts Referred:

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

Citation: (2007) 2 PLJR 383

Hon'ble Judges: S.M. Mahfooz Alam, J

Bench: Single Bench

Advocate: Sukumar Sinha and Abinash Kumar, for the Appellant;

Final Decision: Allowed

Judgement

S.M. Mahfooz Alam, J.

This miscellaneous Appeal has been preferred against the order dated 14.2.2000 passed by Sub-Ordinate Judge 7th, Muzaffarpur, in Partition Suit No. 180 of 1998, whereby the learned Sub-ordinate Judge has ordered to maintain status quo till the disposal of the suit. It has been submitted by the learned Advocate of the appellants that by passing the impugned order the learned Sub-ordinate Judge has virtually allowed the application of the plaintiff filed under Order 39 Rules 1 & 2 of the CPC for grant of temporary injunction. He submitted that there is settled law that for getting an order of temporary injunction the party seeking order of grant of temporary injunction must prove that he has got prima facie case, balance of convenience lies in his favour and that if injunction is not granted he will suffer irreparable loss. Learned Advocate further submitted that the order does not disclose that any one of the requirements for grant of temporary injunction has been fulfilled, rather, the observation made by the learned Sub-ordinate Judge in its order establishes beyond doubt that the plaintiff has got no case for grant of injunction. The learned Advocate of the appellants submitted that the above facts establishes beyond doubt that the impugned order is illegal and requires interference.

2. I have gone through the impugned order which discloses that the learned Subordinate Judge, VIIth, Muzaffarpur, has himself observed that the plaintiff has no specific cause of action and the grant of injunction would be practically misuse of the process. I am of the view that in view of the above observation of the learned Sub-ordinate Judge, it was not proper for him to issue direction to be parties for maintaining status quo till the disposal of suit as the grant of status quo is equivalent to the grant of temporary injunction.

3. Under the circumstances, mentioned above, I am of the view that the impugned order is bad in law and the same requires interference. Accordingly, this Miscellaneous Appeal is hereby allowed and the impugned order dated 14.2.2000 passed by the learned Sub-ordinate Judge VIIth, Muzaffarpur, in Partition suit No. 180 of 1998 asking the parties to maintain status quo till the disposal of the suit is hereby set aside. In the result, this Miscellaneous Appeal is allowed.