

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.14 of 2023

Jai Sri Shyam Home Pvt. Ltd.

... .. Appellant/s

Versus

Smt. Shyama Singh & Ors.

... .. Respondent/s

with

FIRST APPEAL No. 13 of 2023

Vijay Kumar Sharma

... .. Appellant/s

Versus

Smt. Shyama Singh & Ors.

... .. Respondent/s

Appearance :

(In FIRST APPEAL No. 14 of 2023)

For the Appellant/s : Mr. J.S. Arora, Sr. Adv.,
Mr. Manoj Kumar, Adv.

For the Respondent/s : Mr. Harish Kumar, Adv.
(In FIRST APPEAL No. 13 of 2023)

For the Appellant/s : Mr. Ravi Bhatia, Adv.

For the Respondent/s : Mr. Harish Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

13 03-11-2023

I.A. No. 01 of 2023 (In F.A. No. 14 of 2023)

This Interlocutory Application has been filed seeking leave to prefer the First Appeal challenging the Judgment and decree dated 23.11.2022, passed in Title Suit No. 273 of 2011, by the learned Sub-Judge-VI, Patna City, Patna. The appellant was not a party to the suit in question and decree has been passed therein affecting the interest of the appellant pre-judicial to his interest.

2. It is submitted that a registered development agreement with the appellant was made on 02.08.2011 by the



defendant/respondent 2nd set. As per the said registered development agreement, the appellant has to develop the said property and construct multi storied building at their own cost, in which the share in built up area of the appellant along with appropriate share in the land is 60% and the total built up area of the development agreement that of respondent 2nd set is 40% of the said area. It is submitted that the possession of the said land was also delivered to the appellant and pursuant to the agreement the appellant started development work and invested substantial amount. It is submitted that sanction map has also been approved by the Patna Municipal Corporation for construction of the said multi storied building.

3. Learned senior counsel for the appellant further submits that the suit land was initially purchased through registered sale deed in the year 1939 in the name of Khobari Mahto, whose successor in interest sold the land in the year 1980 by two sale deeds in favour of defendant no.1 and mother of defendant nos. 1 to 4. The said development agreement has been executed by defendant nos. 1 to 4. It is also submitted that before vesting as well as after vesting of the land, the successor in interest all along held the possession of the suit land. It is submitted that in the year 1951-52, land acquisition proceeding



was started. The part of the land was acquired by the State from plot no. 361. The compensation amount was paid to successor in interest of defendant nos. 1 to 4 /respondent 2nd set. It is also submitted that in a proceeding under Section 144 in the year 1989, the defendant nos. 1 to 4 had shown that there was a dispute. The said proceeding was initiated against defendant no.1 and Praduman Mahto, in which the question of possession was involved. The said proceeding was made absolute against Praduman Mahto on 18.07.1989. It is further submitted that from the date of purchase the defendant nos. 1 to 4/respondent 2nd set have regularly paid rent and on payment of rent receipt was issued.

4. On the other hand, learned counsel for the respondent 1st set opposed the prayer of the appellant. It is submitted that the appellant has no locus standi to file the present appeal. The respondent 2nd set had also filed First Appeal against the aforesaid Judgment and decree and on whose behalf the appellant claimed his right and interest. It is also submitted that during the pendency of the title suit the appellant filed application before the trial court for making party to the suit which was dismissed. Thereafter he moved before this Hon'ble Court, which too stand dismissed with the observation



to file a separate suit, which was not done by the appellant.

5. Considering the rival submissions of the parties, I am of the view that appellant's interest is involved in the suit property on the basis of registered development agreement under the *Bihar Apartment Ownership Act, 2006*. As Section 5(1) of the said Act provides that developer shall be absolute owner of his share and, therefore, the interest of the developer is involved in the suit property.

6. Considering the aforesaid facts and submissions and averments made therein, the Interlocutory Application is allowed, leave is granted. The appellant is permitted to prosecute the appeal as appellant.

7. List this appeal under the heading for orders on 06.11.2023.

(Khatim Reza, J)

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