

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8207 of 2013

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Alok Shahi S/O Late Umesh Pd. Shahi Shahi R/O Rajendra Nagar, Road No. 8c,
Through Power Of Attorney Holders:- Sanjeev Kumar Singh, S/O Paras Nath
Singh, R/O Village- Pagra, P.S.- Dalsingsarai, District- Samastipur

.... Petitioner/s

Versus

1. Biresh Prasad Shahi S/O Late Shiv Mangal Pd. Shahi.
2. Manish Shahi S/O Sri Biresh Prasad Shahi both R/O Village- Sain, P.S.-
Vaishali, O.P. Belsar, P.O.- Sain, District- Vaishali, At Present C-501, Sabka
Ghar Cghs Plot No. 23, Sector-6 Dwarka, Phase-1, New Delhi - 75
3. Most. Rani @ Most. Rani Satish Shahi W/O Late Satish Prasad Shahi
4. Kumari Rishika D/O Late Satish Pd. Shahi both are Present R/O Raw House
No. 6, Gaurav Co-Operative Society Ltd., Gokul Dham, Gurgaon, East Mumbai
- 400063
5. Most. Vimla Shahi W/O Late Dhiresh Shahi
6. Lalit Kaushik D/O Late Dhiresh Pd. Shahi both are Present R/O C/O N.
Kaushik 3330, Vasant Apartment, Delhi, Gurgaon, Haryana – 122001.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 06-04-2015

Heard Dr. K.N. Singh, the learned senior counsel for the
petitioner and Mr. Dronacharya, the learned counsel for the
respondent. With the consent of the parties, this writ application has
been heard on merits and is disposed of by this judgment at this stage.

Taking exceptions to the rejection of his prayer for

transfer of Misc. Case No. 27 of 2010 from the court of Sub Judge-III Samastipur to some other court, the petitioner has filed this application under Article 227 of the Constitution of India.

The petitioner was the defendant in P.S. No. 158 of 2005 which was decreed ex parte. The defendant-petitioner has filed Misc. No. 27 of 2010 under Order 9 Rule 13 C.P.C. praying for setting aside the ex parte decree. In the meantime, the plaintiff-respondents have got initiated the final decree proceeding in the said P.S. No. 158 of 2005. The petitioner filed a petition on 01.10.2012 before the learned District Judge praying for transfer of the Misc. Case No. 27 of 2010 from the court of Sub Judge-III, Samastipur to some other court. The said petition was registered as Misc. Case No. 58 of 2012. By the impugned order, the learned District Judge has refused to allow the prayer of the petitioner for transfer and dismissed the miscellaneous case.

At the outset, Mr. Dronacharya, the learned counsel for the plaintiff-respondents has pointed out that the presiding officer of the court of Sub Judge-III Samastipur has now been transferred and another presiding officer has joined. On the basis of this fact, it has been canvassed by the learned counsel for the plaintiff-respondents that the apprehension of the petitioner as expressed in the petition for transfer (Misc. Case No. 58 of 2012) no more survives and the prayer

for transfer of the case has become infructuous.

Mr. Singh, the learned senior counsel for the petitioner, in response, has accepted that the prayer of the petitioner for transfer of his case to some other court, after the transfer of the presiding officer of court of Sub Judge-III Samastipur, would no more survive. However, the learned senior counsel has also submitted that the pending Misc. Case No. 27 of 2010 be directed to be disposed of expeditiously in order to avoid multiplicity of litigation as the final decree proceeding is going on.

The learned counsel for the plaintiff-respondents has raised no objection to the prayer rather has further submitted that a direction be issued to the learned court below for disposal of the Misc. Case No. 27 of 2010 within a time frame.

After considering the submissions and the stand of the learned counsel for the parties, it is limpid that after the transfer of the presiding officer of the court Sub Judge-III Samastipur, the prayer of the petitioner for transfer of the Misc. Case No. 27 of 2010 to some other court has become infructuous. The petitioner, therefore, is held not entitled to the reliefs sought for in this writ application. However, this Court is inclined to accept the prayer on behalf of the parties for expeditious disposal of Misc. Case No. 27 of 2010 in view of the final decree proceeding which is ongoing.

Accordingly, this writ application is disposed of with direction to the learned court below to dispose of the Misc. Case No. 27 of 2010 expeditiously preferably within a period of three months from the date of receipt/production of this order.

It is recorded that the learned counsel for both the parties have expressed their willingness to co-operate in the disposal of the said misc. case expeditiously and within the time frame.

(V. Nath, J)

Devendra/-

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