

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.814 of 2004

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Smt.Usha Devi, W/o Dhirendra Kumar Singh, Resident of village and P.O. Bilandpur, P.S. Mahua District Vaishali, at present residing in Mohalla Islampur Nayatola, Town and District Muzaffarpur.

.... Defendant-Petitioner

Versus

1. Sheo Bachan Singh, S/o Ram Parichhan Singh, Resident of village and P.O. Chainpur, P.S. Goraul District Vaishali

.... Plaintiff-Opp.Party

2. Sri Dhirendra Kumar Singh, S/o Late Sheojee Singh, Resident of village and P.O. Bilandpur, P.S. Mahua District Vaishali, at present residing in Mohalla Islampur Nayatola, Town and District Muzaffarpur

.... Plaintiff-Opp.Party

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Appearance :

For the Petitioner : Mr. Rakesh Kumar Srivastava, Adv.
Mr. Manoj Kumar
For the Respondents : Mr. Vinay Kirti Singh, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 20-02-2015

Interlocutory Application-4982 of 2012

The 1st respondent died in the last week of February, 2012. This application is filed to bring his legal representatives on record. There is no opposition to the application, nor any individual has come forward claiming to be the legal heirs of the deceased respondent. Hence, the application is allowed.

Civil Revision No.814 of 2004

This revision application is filed under Section-115 of C.P.C. against the order dated 24.5.2004, passed by the court of Munsif, East Muzaffarpur, in T.S. No.55/96. Through the said order, the trial court has recalled its earlier order dated 17.11.1998, staying the further proceedings.

There is no representation for the petitioner. This Court has gone through the record and heard the arguments advanced by Shri Vinay Kirti Singh, learned counsel for the respondents. T.S. No.55/96 is filed by the 1st respondent herein for declaration of title and recovery of possession over the land. The petitioner is defendant No.1 in the suit.

The petitioner has also filed T.S. No.248/95, in the same Court for the relief of specific performance of contract of agreement of sale in respect of the very property which is the subject-matter of T.S. No.55/96. At his instance, the further proceedings in T.S. No.55/96 was stayed under Section-10 of C.P.C.

The respondents informed the trial court that the T.S. No.248/95 was dismissed and Title Appeal No.29/2000, filed against it, was also dismissed, and there

is no basis to continue the stay of further proceedings in T.S. No.55/96. The petitioner, however, insisted that the second appeal is pending in the High Court against the decree in T.S. No.248/95 and the stay of the suit need not be vacated. The trial court has recalled its order dated 17.11.1998.

It is only when two suits with overlapping claims are pending that the necessity to stay one of them, naturally the subsequent suit, would arise. Further, there must be similarity of cause of action in both the suits. In the instant case, the two suits i.e. T.S. No. 248/95 and T.S. No.55/96 are substantially different, though they are in relation to the same property.

Even if there exists a possibility to stay one of the suits, on account of the fact that the subject-matter of both the suits is the same property, the fact remains that not only T.S. No.248/95, but also the appeal arising out of it was dismissed. Section-10 of C.P.C. does not take in its fold the appeals for the purpose of staying the suits. At the most, the judgment in the disposed of suits, or the appeals can be filed as documents in the pending suits.

This Court does not find any basis to interfere with the order under revision. The revision application is,

accordingly, dismissed.

The trial court shall take up T.S. No.55/96 for trial after intimation to both the parties.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

K.C.jha/-
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