

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1202 of 2013

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Burhan Rizvi @ Md. Burhan Rizvi S/O Late Haji Md. Usman R/O
Mohalla-Mojahidpur(Purab Tola), P.S.-Mojahidpur, Distt-Bhagalpur.

.... Petitioner/s

Versus

1. Md. Razvi Kasim.
 2. Md. Hashim Mustafa.
 3. Md. Abdul Quadir.
 4. Md. Aslam.
 5. Bibi Tahira respondent nos. 1 to 4 are sons and respondent no. 5
Daughter Of Md. Sayeed.
 6. Bibi Ruhi W/O Late Abdul Wahab , S/O Late Md. Sayeed.
 7. Md. Intekhab Alam@Raju.
 8. Md. Khatab Alam both S/O Late Abdul Wahab, S/O Late Md. Sayeed.
 9. Bibi Reshma.
 10. Bibi Rozi both Daughter Of Late Abdul Wahab, S/O Late Md. Sayeed
R/O Mohalla-Mojahidpur(Purab Tola), P.S.-Mojahidpur, Distt-
Bhagalpur.
- Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Najmul Hodda

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

4 01-12-2015 Heard the learned counsel for the petitioner. The
learned counsel for the respondents is also present.

The present application under Article 227 of the
Constitution of India has been filed questioning the impugned
order whereby the learned court below has passed the order under
Section 10 C.P.C. staying further proceeding of the suit till the
pendency of the Second Appeal No. 16 of 2008.



The petitioner has filed the T.S. No. 408 of 2004 seeking relief against the survey entry in the name of the defendants. The fact is not in dispute that the petitioner has claimed title over the suit property on the basis of purchase from Bibi Mustaquima who was second wife of Md. Shafique on the assertion that Md. Shafique had transferred the suit property by oral gift in favour of his second wife Bibi Mustaquima. But earlier to this suit, the T.S. No. 107 of 2001 was filed by the defendants claiming their title over the suit property and questioning validity of the oral gift by Md. Shafique in favour of his second wife Bibi Mustaquima through whom the petitioner has claimed his right in the present suit. The said suit was decreed and the appeal thereafter was also dismissed and at present the S.A. No. 16 of 2008 is pending before this Court between the parties.

The learned court below, in the impugned order, has taken into notice that the property, parties and the crucial issue in both the suits are directly and substantially the same and on that basis, it has come to the conclusion that the judgment and decree passed in the Second Appeal No. 16 of 2008 would have a direct bearing upon the issues arising in the present suit. Accordingly, the learned court below has passed the impugned order staying further proceeding of the title suit.



The learned counsel for the petitioner has made the sole submission that even if the fact of oral gift by Md. Shafique in favour of his second wife Bibi Mustaquima (vender of the plaintiff-petitioner) is decided against the petitioner, still Bibi Mustaquima would be entitled to a share in the property of Md. Shafique. It has, thus, been canvassed that the impugned order is not sustainable in law in view of this aspect.

After considering the submissions and the facts and circumstances of the case, it is manifest that one of the issues in the present suit is with regard to the validity of the oral gift in favour of the vendor of the plaintiff-petitioner. It has also not been disputed that the Second Appeal No. 16 of 2008 is pending before this Court wherein the decree passed in the earlier title suit no. 107 of 2001 filed by the defendants is under challenge. It has also not been in dispute that one of the issues in the T.S. No. 107 of 2001 was with regard to the validity of the said oral gift. In this view of the matter, this Court does not find substance in the contention on behalf of the petitioner that even if the question of oral gift is decided against the petitioner still the petitioner would be entitled to the suit property as wife of Md. Shafique would have a share in her own right. It is apparent that by the impugned order, the learned court below has only stayed the further proceeding of the

suit till the decision of the Second Appeal no. 16 of 2008 and, therefore, this is not the stage to decide and determine this contention on behalf of the petitioner.

This Court, therefore, does not find any illegality or error of jurisdiction in the impugned order. The writ application is accordingly, dismissed.

(V. Nath, J)

Devendra/-

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