

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5385 of 2011

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1. Asha Devi Wife Of Mahadeo Sah Resident Of Village Kopa P.S. & P.O.
Kopa Bazar District Saran

.... Petitioner

Versus

1. Anand Kumar Son Of Laxman Mahto Resident Of Kopa Bazar P.O. &
P.S. Kopabazar, District Saran

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Mukul Prasad

For the Respondent/s : Mr. Binod Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

3 18-08-2015 Heard Mr. Prasad counsel for the petitioner and Mr.
Binod Kumar Singh for the respondent-tenant.

The petitioner filed Eviction Suit No. 9 of 2001 for a decree of eviction against the respondent and also for realization of rent. In the said proceeding an application under Section 15 of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (for short 'the Act') was filed on 17.3.2005. The respondent filed rejoinder thereto stating that much prior to filing of the suit he had entered into an agreement to sale with the husband of the plaintiff-petitioner in respect of the suit property inasmuch as in part performance of the contract he was allowed to continue in possession thereof.

Mr. Singh for the respondent has submitted that

since the husband of the petitioner did not execute the sale deed a Title Suit bearing Title Suit no. 356 of 2001 has already been instituted wherein the petitioner has also been impleaded as defendant. The court below in the impugned order refused to pass an order on the application filed by the petitioner under Section 15 of the Act observing as under:-

“Therefore considering the provision and contention of both parties, I am of the opinion that relationship of land lord and tenant apparently in doubt, so at this stage giving any tentative finding over this matter will not be proper, so far as deposition of rent is concerned, that can be decided during passing judgment, because if pltff. was not able to prove his land-lordship he will lose her case, and if she does, automatically the problem of pltff. raised through this petition will be solved. Accordingly this petition is disposed off. Put up on 30.11.10 for further proceeding.”

Mr. Singh has supported the order and placed reliance on Section 53-A of the Transfer of Property Act,1882 which reads as under:-

“53-A.Part performance.-
Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in

possession continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

It is submitted on the strength of the statutory provisions under the Transfer of Property Act that the respondent shall be treated as person/owner in possession of the suit property in part performance of the contract. The view taken by the trial court while dealing with the application filed under Section 15 of the Act is therefore neither illegal nor erroneous.

Having heard the parties, in my view, the trial Court has rightly observed in the impugned order that any finding with regard to the relationship of landlord and tenant which is sine qua non for passing an order under Section 15 of the Act cannot

be given which will prejudice the case of the parties. This court does not find any fundamental legal flaw in the consideration of the matter by the trial Court.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

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