

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19809 of 2010

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1. Smt. Shobha Kumari D/O Late Sitaram Sao R/O Mohalla- Machhua Toli,
P.S.- Kadam Kuan, Town And Distt.- Patna

2. Smt. Saroj Kumari D/O Late Sitaram Sao R/O Mohalla- Machhua Toli,
P.S.- Kadam Kuan, Town And Distt.- Patna

....Appellants-Petitioner/s

Versus

1. Ranjit Sao S/O Late Ramdas Sah R/O Mohalla- Machhua Toli, P.S.-
Kadam Kuan, Town And Distt.- Patna

2. Smt. Neelam Devi W/O Rabindra Kumar R/O Mohalla- Machhua Toli,
P.S.- Kadam Kuan, Town And Distt.- Patna

3. Chandrawati Devi W/O Late Sitaram Sao R/O Mohalla- Machhua Toli,
P.S.- Kadam Kuan, Town And Distt.- Patna

....Respondents-Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh 1

For the Respondent/s : Mr. Shiv Kumar Dwivedy

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

7 18-08-2015 Heard Mr. D.K. Sinha for the petitioners and Mr. Dwivedi
for the respondents.

Appellants of Title Appeal No. 140 of 2006 have filed the
present application aggrieved by the order dated 03.04.2007 passed by
the learned lower appellate court (Addl. District Judge-VI, Patna)
whereby the application filed under Order 41 Rule 5 of the Code of
Civil Procedure (for short 'the Code') was considered and rejected.

The background under which the order was passed may
advantageously be noticed. The respondent no.1 instituted Title Suit
No.290 of 1994 seeking a declaration that the deed of gift executed by
Sitaram Sao was valid and genuine document. A further prayer was



made to declare cancellation thereof as illegal and inoperative. Be it noted that the plaintiff (respondent no.1) had already alienated the suit property in favour of others. Sitaram Sao (father of the petitioner) filed Title Suit No. 409 of 1999 for declaring the deed of gift executed by him in favour of the defendant (respondent no.1 herein) was fraudulent and null and void which was neither acted upon nor possession was given to the donee. The two suits therefore were made cognate and heard together. The trial court by judgment and decree dated 25.09.2006 dismissed the suit filed by Sitaram Sao (T.S.No.409/99) and allowed T.S. No. 290/94. The operative part/portion thereof is extracted herienbelow:-

“T.S. No.290/94 is hereby decreed with cost on contest against defendants. T.S. No. 409/99 is hereby dismissed with cost on contest. The defendant of T.S. No. 290/04 are hereby ordered to give the vacant possession of the suit property to the co-plaintiff Neelam Devi within three months from the date of this judgment, failing which the co-plaintiff Neelam Devi shall be at liberty to get the possession of the suit property under the process of law.”

The plaintiff-petitioner(s) of T.S. No. 409/99 assailed the same in the appellate court by filing T.A. No. 140/2006 wherein an application for stay under Order 41 Rule 5 CPC was filed. The appellate court rejected the said application leading to the present writ application.



The contention of the petitioners is that the order passed by the court does not reflect consideration of the matter in the light of the settled legal principles enunciated by this Court as well as the Apex Court. He relies in this regard on the ratio laid down in the case of **Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd. (2005 (1) PLJR (SC) 320)** where the court as a principle held that if during the pendency of the suit a party is likely to be dispossessed from the residential premises the same has to be considered/construed as substantial loss/injury to the party. The court has to consider the equity also while making consideration of an application for grant of stay.

In the case at hand the defendant-respondents herein had already filed Execution Case No. 01/2007 for execution of the decree and, as such, the appellate court acted erroneously in refusing the application filed by the petitioners particularly when in the judgment itself the petitioner was directed to give possession of the premises.

Counsel for the defendant-respondents has submitted that Sitaram Sao had executed a deed of gift in favour of defendant-respondents only in respect of 1/3rd of the suit house. The remaining part/portion of the house has remained with the plaintiff-petitioners. The suit was filed by the defendant-respondents (T.S. No. 290/94) only for confirmation of the execution of the deed of gift and also to declare the deed of cancellation executed subsequently by Sitaram Sao on 11.06.1993 as null and void. No recovery of possession was prayed. It has also come in course of consideration of the judgment that the



principal defendant-respondent(s) executed a sale deed in respect of the subject/suit land of T.S. No. 290/94 in favour of the purchaser who was put in possession but subsequently the petitioners herein got those purchasers evicted therefrom by the court proceeding. This aspect of the matter has been noticed in the impugned order also by the appellate court. The respondents having obtained the decree in their favour in the year 2006 are unable to enjoy the benefit thereof. The court while considering such prayer is also required to keep in focus this fact. If the order is construed/considered in the background of these facts then there is no illegality in the impugned order meriting interference.

The judgment which has been appealed against itself directs the plaintiff (petitioners herein) to give possession of the house to the defendants. Such direction during the pendency of the case would definitely cause substantial loss or injury to the appellant. The equity also leans in favour of the petitioner. On the other hand, the defendants having obtained the decree in the year 2006 continues to be denied the benefit thereof if the stay is granted by the appellate court.

Weighing the submissions of the parties in the backdrop of the fact noticed hereinbefore, in my view, ends of justice shall be subserved if the appeal itself is directed to be heard and disposed of expeditiously by the appellate court and the stay as prayed for is allowed for limited period. Both the parties have taken a stand that the appeal is ready for consideration and disposal.

The writ application is disposed of by directing the appellate

court to dispose of the appeal on priority basis preferably within a period of four months from the date of receipt/production of a copy of this order before the appellate court by both the parties. Upon production of a copy of this order by the petitioners herein before the appellate court the operation of the decree under appeal in T.A. No. 140 of 2006 shall remain stayed for a period of four months therefrom.

(Kishore Kumar Mandal, J)

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