

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5229 of 2012

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Nand Kishore Chirania

.... Petitioner/s

Versus

Suresh Kumar Hisaria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

4 02-11-2015

Heard the learned counsel, Mr. Anil Prasad Singh for

the petitioner. Nobody appeared on behalf of the respondent.

This application under Article 227 of the Constitution of India has been filed by the defendant-petitioner against the order dated 03.02.2012 passed by learned Munsif, Naugachia in Title Eviction Suit No.1 of 2011 whereby the court below refused to stay the proceeding of eviction suit during the pendency of the suit for specific performance filed by the defendant-petitioner being Title Suit No.108 of 2011.

It appears that the plaintiff-respondent filed eviction suit under Section 11(i)(c) of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 for eviction of the defendant from the suit shop premises. The defendant-petitioner after obtaining leave has filed a contesting written statement denying the bonafide requirement of the suit premises by the plaintiff. Thereafter, the defendant-petitioner filed an application under Section 10 C.P.C.

praying therein to stay the further proceeding of this suit till the disposal of Title Suit No.108 of 2011. By the impugned order, the court below has rejected this application.

The learned counsel for the petitioner submitted that the father of the vendor of the plaintiff had entered into an oral agreement with the defendant-petitioner on 05.01.2000 to sell the suit premises to the defendant. However, he died. Thereafter, the daughter of the owner has sold the property in favour of the present plaintiff on 20.05.2004. When the defendant-petitioner came to know about this sale in favour of the plaintiff-respondent, the defendant-petitioner filed Title Suit No.108 of 2011 praying for specific performance of contract alleged to have been entered into between him and the father of the vendor of the plaintiff in the year 2000. Therefore, if the further proceeding of this eviction suit is not stayed, the present defendant-petitioner shall be greatly harassed which will occasion failure of justice.

On the other hand, as stated above, nobody appeared.

It is admitted fact that Eviction Suit under Section 11(i)(c) of the B.B.C. Act, 1982 has been filed by the plaintiff-respondent against the defendant-petitioner. The petitioner has only filed a suit for specific performance of contract.

Section 10 C.P.C. provides that “no Court shall proceed with the trial of any suit in which the matter in issue is also

directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government.....

In the present case, admittedly, the eviction suit is the earlier suit filed by the plaintiff-respondent. It is admitted fact that the issue involved in eviction suit is only personal necessity provided under Section 11(i)(c) of B.B.C. Act i.e. whether the plaintiff of eviction suit requires the suit premises bonafidely or not. So far the suit for specific performance is concerned, the matter involved is whether there was any oral agreement between the parties and whether the plaintiff of that suit is entitled for a decree for specific performance of contract or not. Therefore, the matter involved in eviction suit is entirely different than the matter involved in the suit for specific performance of contract. Now, therefore, the court below has rightly considering Section 10 C.P.C. has rejected the application filed by the present petitioner.

In view of the above position, I find no merit in this writ application and accordingly, it is dismissed.

Saurabh/-

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(Mungeshwar Sahoo, J)