

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5714 of 2014

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1. Durga Devi Wife of Sri Kailash Prasad Agrawal.
 2. Kailash Prasad Agrawal S/O Late Banarsi Lal Agrawal Both Resident of Mohalla- Ramchowk, Shamsherganj P.O.- Lalbagh, P.S. Town- Dist.- Darbhanga.

.... Petitioner/s

Versus

Vijay Kumar Poddar S/O Late Nagermd. Poddar Resident of Mohalla- Bara Bazar P.O. Lalbagh P.S. Town And Dist.- Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. GOPAL JEE

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-03-2015

Heard Mr. Gopal Jee, the learned counsel for the petitioners.

Calling in question the refusal by the learned court below to stay the proceeding of eviction suit during the pendency of the suit for specific performance of contract by exercising the power under Section 10 C.P.C., the petitioners have filed this application under Article 227 of the Constitution of India.

The facts are not in dispute that the suit for specific performance of contract has been filed by the petitioners seeking a decree against the respondent for execution of sale deed on the basis

of the agreement for sale for the suit premises. However, the respondent has filed the eviction suit against the plaintiff (petitioner) of the suit. The learned court below by the impugned order has come to the conclusion that the provision of Section 10 C.P.C. is not applicable as the issues are not directly or substantially the same in both suits. The prayer of the petitioner was, therefore, rejected.

Considering the facts and circumstances of the case and the submissions on behalf of the petitioners, this Court has not been persuaded to interfere with the impugned order.

At this stage, the learned counsel for the petitioner has prayed for a liberty to file appropriate petition for analogous hearing of the suit. The present writ application is dismissed with liberty to the petitioners to pursue the remedy including the relief for praying for analogous hearing, if available in accordance with law.

(V. Nath, J)

Devendra/-

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