

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14320 of 2014

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Sachchidanand Prasad son of Late Ramchandra Prasad resident of Mohalla
- Raghunath Path, Bailey Road, near Kali Mandir, P.S. Danapur, District -
Patna

.... Petitioner/s

Versus

1. M/s Jyotirmay Sahkari Grih Nirman Samiti Ltd., through its Secretary,
Shri Abhay Bhushan Sinha, Boring Road, Patna, P.S. Shri Krishnapuri,
District – Patna
2. Gauri Shanker Singh son of Shiva Datta Singh resident of village -
Kothawa, P.S. Khagaul, District – Patna
3. Satyam Sahkari Grih Nirman Samiti, Gosaitola, P.S....., District - Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binay Kant Mani Tripathi, Adv.

For the Respondent No.1: Mr. Abhay Bhusan Sinha Adv.

Mr. Baban Ray, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

3 29-06-2015 Heard the learned counsel for the petitioner and the

learned counsel for the respondents. With the consent of the

parties, this writ application has been heard at this stage and is

being finally disposed of by this order.

The petitioner is the defendant no. 3 in the suit
which has been filed for specific performance of contract. The suit
was originally filed claiming relief against the defendant no. 1 on
the basis of an agreement for sale executed by him in favour of the
plaintiff for the suit land. The present petitioner was impleaded as

defendant no. 3 in the year 1994. It has been submitted by the learned counsel for the petitioner that the present petitioner is the purchaser of the suit land from the defendant no. 2 who himself was the purchaser from the defendant no. 1 of the suit property during the pendency of the suit.

The petitioner filed an application before the court below inter alia stating that there was no assertions in the suit against the defendant no. 3 and the relief has been claimed only against the defendant no. 1 and therefore the maintainability of the suit be decided as preliminary issue. By the impugned order, the learned court below has not allowed the prayer of the present petitioner to try the issues raised by the petitioner as preliminary issue and deferred the same for consideration at the time of hearing of the suit.

The learned counsel for the petitioner has submitted that the learned court below has committed error of jurisdiction in refusing the prayer of the petitioner inasmuch in the plaint, there has been no allegation or relief against the defendant no. 3 and in that view of the matter, there is no cause of action at all against the present petitioner in the suit.

After perusal of the impugned order and the materials on the record, it is evident that the suit has been filed

against the defendant no. 1 claiming specific performance of contract for sale on the basis of agreement for sale with the plaintiff for the suit land. The defendant no. 3 admittedly is the purchaser of the suit property from the persons who themselves purchased the property from the defendant no. 1 during the pendency of the suit. The jurisdiction of the court to try an issue as a preliminary issue is circumscribed by the condition as mentioned in Order 14 Rule 2 C.P.C. whereby it has been stipulated that when the issue appears to be relating to the jurisdiction of the court or the bar of the suit by any law, only in that case, the said issue can be tried as preliminary issue. In the present case, the petitioner is a purchaser of the suit property during the pendency of the suit and has been made party in the proceeding. In that view of the matter, this Court does not find any illegality or irregularity in the impugned order refusing to try the issue as proposed by the petitioner as preliminary issue as the same does not relate to the jurisdiction of the court or bar of the suit by any law.

The writ application is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

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