

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.732 of 2016**

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Amar Kumar Keshri & Anr

.... Defendants-Petitioners

Versus

Dr. Bhagwan Das

.... Plaintiff-Respondent

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Appearance :

For the Petitioners : Mr. Jitendra Kishor Verma, Advocate
Mr. Ankit Katriar, Advocate.
Mr. Kumar Manish, Advocate.
Mr. Anjani Kumar, Advocate.
Mr. Abhishek Anand, Advocate.
For the Respondent : Mr. J.S.Arora, Sr. Advocate.
Mr. Manoj Kumar, Advocate.
Mr. Gaurav Pratap, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. ORDER

8 21-12-2016 I have heard the learned counsel Mr. Jitendra Kishor Verma for the petitioners and the learned Senior Counsel Mr. J.S. Arora for the respondent.

2. This application under Article 227 of the Constitution of India has been filed by the defendants-petitioners for setting aside the order dated 18.05.2016 passed by the learned Subordinate Judge-I, Patna in Money Suit No.1314 of 2014 whereby the learned court below rejected the application filed by the defendants-petitioners objecting to the territorial jurisdiction of this Court at Patna.

3. It appears that the plaintiff-respondent filed aforesaid money suit praying for the following reliefs:



- (a) On adjudication of the facts stated above after getting all details of sale and receipts of consideration money by the defendant nos.1 and 2 from and after deducting 2% out of total consideration money, being the commission payable to the defendant nos.1 and 2 for the remaining amount, a money decree of the remaining amount be passed against the defendant nos.1 and 2 and in favour of the plaintiff with interest thereon at the rate of 18% per annum from the date of sale *pendente lite* and till realization, directing the defendant nos.1 and 2 to pay the said sum within the time fixed by the Court or to be realized through the process of the Court thereafter.
- (b) During the pendency of the suit by an order of temporary injunction the defendant nos.1 and 2 be restrained from alienating and encumbering the suit property or any part thereof and from changing the physical feature thereof.

(c) & (d).....

4. The defendants-petitioners filed application raising the objection that the Court at Patna has no territorial jurisdiction because the suit properties are at Purnea. The defendants also reside at Purnea and therefore, the suit is to be filed at Purnea. Rejoinder was filed to the said application by the plaintiff alleging that since the agreement between the parties was entered into at Patna and plaintiff agreed to pay remuneration to the defendants by way of commission at the rate of 2%, the Court at Patna has the territorial jurisdiction.

5. By the impugned order the court below has held that



the Civil Court at Patna has got the territorial jurisdiction in view of Section 20 (c) of the Code of Civil Procedure.

6. The learned counsel Mr. Jitendra Kishor Verma for the petitioners relying on various decisions submitted that the Civil Court at Patna has got no territorial jurisdiction. He placed reliance on **(2002) 1 Supreme Court Cases 567** and **(2014) 9 Supreme Court Cases 329** and also **A.I.R. 1973 Allahabad 555**.

7. On the other hand, the learned Senior Counsel Mr. J.S. Arora for the respondent submitted that an application has already been filed in the court below for deleting the relief of injunction prayed by the plaintiff. The suit is simple suit for money decree based on the oral agreement mentioned by the plaintiff in paragraph 5 of the plaint. The property is not in the suit nor the plaintiff is claiming any interest in the property. Earlier Power of Attorney was given to the defendants to sell the property of the plaintiff situated at Purnea. The defendants after Power of Attorney expressed their inability to sell the property according to the terms mentioned in Power of Attorney and thereafter a negotiation was held between the parties and the parties agreed to the term that for selling the property the defendants will be given 2% out of the sale consideration. This agreement was entered into between the parties at Patna because the plaintiff is unable to



move frequently. Since the agreement was entered into at Patna and this suit has been filed in view of this agreement, the suit is maintainable at Patna in view of Section 20 (c) of the Code of Civil Procedure.

8. The learned Senior Counsel submitted that the Hon'ble Supreme Court in A.I.R. 1985 Supreme Court 577 and this High Court in A.I.R. 1954 Patna 147 (DB) have held that at the time of consideration of territorial jurisdiction the case of the defendant cannot be looked into. Moreover, the defendants in the present case have not filed written statement in the suit and without there being any pleading on their behalf they are claiming that the allegation made by the plaintiff regarding oral agreement is wrong and, therefore, their statement made in the application cannot be the decisive factor for deciding the territorial jurisdiction.

9. Perused the decisions relied upon by the learned counsel for the petitioners. There is no dispute about the legal proposition laid down by the decisions relied upon by the petitioners. The question is whether in the present facts and circumstances of this case these decisions are applicable. Admittedly in the present case landed properties are not the subject matter of the suit. Although in relief (b) the plaintiff



claimed for injunction but it is submitted by the learned Senior Counsel Mr. Arora that application has been filed for deleting the said relief. Moreover, so far relief (a) is concerned, the relief is claimed on the basis of agreement between the parties which is specifically pleaded in paragraph 5 of the plaint. According to this pleading, the agreement between the parties to sell and purchase was held at Patna because the plaintiff is not in a position to move. Because of this fact the Civil Court at Patna has got the jurisdiction to grant relief as claimed in relief (a). The allegation of the defendants in the application objecting territorial jurisdiction is that the so-called oral agreement is wrong. The Power of Attorney was executed to sell the property situated at Purnea. Now, therefore, Civil Court at Patna has no jurisdiction.

10. A Division Bench of this Court in the case of **A.I.R. 1954 Patna 147 (Kodo Minerals Steatite Mine & Mill-Owners and another Vs. Rohtas Industries)** has held that suit for damages for breach of contract may be filed where contract was made.

11. It is settled law that where a right and an infringement thereof are both necessary to be proved before relief can be granted, the cause of action arises partly where the right was created and partly where it was infringed. The making of the



contract itself is a part of the cause of action for a suit on the contract. Here, the offer and acceptance concluded at Patna, therefore, Civil Court, Patna has the territorial jurisdiction.

12. In the present case, admittedly the defendants have not filed any written statement. Objection is being raised regarding territorial jurisdiction. According to paragraph 5 of the plaint, the contract was entered into between the parties at Patna. The question whether the allegation can be relied upon or not or this allegation in paragraph 5 is true or not that is a question to be decided finally but for the purpose of finding territorial jurisdiction, it will be treated as valid unless it is proved contrary by evidence. The Court is not required to prejudge the averments made in plaint. Therefore, the Civil Court at Patna has got the jurisdiction to grant relief (a) claimed by the plaintiff, which is a money decree because of breach of the agreement between the parties mentioned in paragraph 5 of the plaint. So far the injunction is concerned, admittedly the plaintiff has filed application for deleting the same relief, therefore, it requires no consideration.

13. In view of the above facts and circumstances of the case, in my opinion, the Civil Court at Patna has the jurisdiction and therefore, there is no reason as to why the order impugned be



interfered with in exercise of supervisory jurisdiction.

14. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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