

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.716 of 2016

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Sogra Khatoon & Ors

.... Appellant/s

Versus

Md. Yusuf Ekbal & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dronacharya

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 27-09-2016 Heard the learned counsel, Mr. Dronacharya, for the petitioner and the learned counsel, Mr. Rakesh Chandra, for the respondent.

2) Perused the impugned order dated 27.05.2016 passed by ADJ IInd, Khagaria in Misc. Case No.1 of 2011 whereby the learned Court below rejected the application under Order 41 Rule 5 read with 151 CPC for stay of the Execution Case No.5 of 2002 filed by the present petitioner.

3) It appears that a suit was filed by the petitioner for declaration of title. In the said suit, counter claim was filed by the defendant respondent praying for declaration of title and for eviction of the plaintiff, i.e. in Title Suit No.4 of 1983. The said suit was dismissed whereas the counter claim filed by the defendant respondent herein has been decreed. Again the said Judgment and Decree, the petitioner filed Title Appeal No.4 of



1997. The decree holder-defendant respondent filed Execution Case No.5 of 2002. The Title Appeal, No.4 of 1997 was dismissed for default and for readmission of the said Title Appeal, Misc. Case No.1 of 2011 has been filed by the petitioner under Order 41 Rule 19 CPC. In this Misc. Case application under Order 41 Rule 5 read with Section 151 CPC has been filed. This application has been rejected by the Court below by the impugned order considering the conduct of the present petitioner.

3) The learned counsel, Mr. Dronacharya, for the petitioner submitted that even if Order 41 Rule 5 is not applicable in the present facts and circumstances of the case because Title Appeal is not there but then the Court can exercise inherent jurisdiction under Section 151 CPC for doing justice. The Court below has not considered the fact that the Misc. case has already been admitted and the notice in the execution case has been served on the petitioner in the year 2014. On the suit property, there is residential house wherein the petitioners are residing and if during the pendency of this Misc. case or Title Appeal, they are dispossessed then they will suffer serious loss and irreparable.

4) On the other hand, the learned counsel for the respondent submitted that under Section 151 CPC, the Court has to exercise the jurisdiction considering the facts and circumstances of each

case. If there is specific provision for stay 151 CPC is not applicable for circumvent the special provision for stay. So far 151 is concerned, it cannot be used only by stating that in the interest of justice, the Court should exercise the inherent jurisdiction.

5) The Hon'ble Supreme Court in the case of *Manohar Lal Chopra vs Rai Bahadur Rao Raja Seth Hiralal AIR 1962 527 SC* has held that **'inherent jurisdiction of the court to make order ex debito justitiae is undoubtedly affirmed by s. 151 of the Code, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code. Where the Code deals Expressly with a particular matter, the provision should normally be regarded as exhaustive.'** In the present case, from perusal of the impugned order, it appears that the Court below considered the conduct of the petitioner and thereafter held that the petitioner is not entitled to invoke the inherent jurisdiction under Section 151 CPC.

6) The Hon'ble Supreme Court in the case of *Jai Singh Vs. Municipal Corporation of Delhi (2010) 9 SCC 385* has held that **'the High Court cannot lightly or liberally act as an appellate Court and re-appreciate the evidence. Generally, it cannot substitute its own conclusion for the conclusions reached by**



the Courts below. The exercise of supervisory jurisdiction is a discretionary power dependent on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice.’ However, on this analogy that injustice will be done to the petitioner, the Court cannot interfere with the impugned order for doing injustice to the other side. The justice is to be balanced by the Court.’ The Court below has considered this aspect of the matter and has refused to exercise the jurisdiction under Section 151CPC. In such circumstances, when the Court below has exercised a jurisdiction in the manner permitted by law, this Court cannot take another view for the purpose of supervising the order passed by the Court below.

7) Accordingly, I do not find any reason to interfere with the impugned order, therefore, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

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