

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5556 of 2015

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1. Manoj Kumar, S/o Late Gulab Chand Prasad Resident of /mohalla
Sahebganj, Butanbari, P.O. & P.S. Chhapra Town, District Saran.

.... Petitioner/s

Versus

1. Kuldeep Gupta @ Vishal Gupta
2. Navin Gupta Both sons of Suresh Prasad Residents of Mohalla Mauna
Phatak, P.O. & P.S. Chhapra Town, District Saran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 06-04-2016

Heard Mr.Chandan, learned counsel for the petitioner.

By the order dated 12.01.2015 passed by the learned
Munsif-1st,Saran in Eviction Suit No. 11 of 2012 rejected the
application filed by the petitioner under Section 10 of the Code of
Civil Procedure praying for stay of further proceeding in Eviction
Suit No. 11 of 2012 during the pendency of T.S.No. 51 of 2012.

Learned counsel for the petitioner submitted that
there was previous agreement between the real owner of the
property and the petitioner whereby the real owner agreed to sale
the property to the petitioner for Rs. 4,25,000/- and pursuant to
that agreement the petitioner has already paid Rs. 3,50,000/-.When
the owner did not execute the sale deed in favour of the petitioner,
the petitioner filed Title Suit No. 51 of 2012. However, the

original owner of the property sold the property to the plaintiff of Eviction Suit and the plaintiff of the Eviction Suit has filed the Suit for eviction of the petitioner on the ground of personal necessity.

According to learned counsel, the court below has erroneously rejected the application under Section 10 of the Code of Civil Procedure.

Perused the impugned order.

Learned counsel for the petitioner has relied upon a decision of this Court in the case of Sri Raj Kumar Prasad –v- Smt. Kaushilya Devi, 1997(2) PLJR 649 and the decision of the Hon’ble Supreme Court in the case of Mohd. Nooman and others -v- Mohd. Javed Alam and others, (2010) 9 SCC 560.

From perusal of the decisions cited by the learned counsel for the petitioner it appears that the facts are entirely different. Admittedly the issue framed in the Suit is entirely different and the issue involved in the suit for specific performance of contract is entirely different.

The settled principle of law as has been held by the Supreme Court in the case of National Institute of Mental Health & Neuron Sciences –v- C.Parameshwara, AIR 2005 SC 242, is that the fundamental test to attract Section 10, is whether on final

decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit.

In the present case, admittedly, the issue involved in Eviction Suit is whether there is relationship between the landlord and the tenant.

So far suit for specific performance is concerned, it may be mentioned here that the decree is yet to be passed and therefore at present the petitioner is not the owner of the property. His right is yet to be decided. This Court in the case of Shri Niawah Singh –v- Shri Chandradeo Singh, 2006(4) PLJR 129 has held that on the ground of pendency of suit for specific performance, the suit cannot be stayed.

In view of the above, I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, the writ application is dismissed.

(Mungeshwar Sahoo, J)

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