

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9125 of 2014

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Bipin Bihari Tiwari S/O Late Kapil Dev Tiwari R/o Village - Chandava, P.S. Arrah
(Nawada), District - Bhojpur, at present residing at Mohalla - Shanti Katra, near
Arya Samaj Mandir, Mugalsarai, P.S. Mugalsarai, District - Chandauli (U.P.)

.... Petitioner/s

Versus

Kamala Devi W/O Rambadan Mishra R/o Village - Sonbarsa, P.S. Shahpur, District
- Bhojpur, at present residing at House no. 314, near Chatarbhuja, Kali Sthan,
Mugalsarai, P.S. Mugalsarai, District - Chandauli (U.P.)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-05-2016

Heard Mr. Ajay Kumar Singh, learned counsel for the
petitioner.

By the order impugned in this application under Article
227 of the Constitution of India the defendant's prayer for directing
the plaintiff to produce the document [the agreement for sale] before
the court on affidavit has been turned down as frivolous.

The fact are not in dispute that the T.S. No. 603 of 2007
has been filed by the plaintiff for grant of a decree for specific
performance of contract for sale of the suit land against the defendant
on the basis of the agreement for sale dated 27.02.2001. The petition
was filed by the defendant purporting to be under Order 11 Rule 13



for direction to the plaintiff to produce the said document. The petition was allowed and the learned court below directed the plaintiff to produce the said document and the same was produced by the plaintiff in compliance of the direction of the court. The said order was passed by the court on 14.05.2010 which appears from the petition filed by the plaintiff on 27.08.2012 (Annexure-1). The defendant thereafter raised the objection that the plaintiff had not produced the said document on affidavit as required under Order 11 Rule 13 C.P.C. which also prescribed a format in the schedule for production of such document. The learned court below by the impugned order has rejected the petition filed by the defendant-petitioner as frivolous.

Mr. Singh, learned counsel for the petitioner has strenuously argued that the requirement to produce the document on affidavit as envisaged under Order 11 Rule 13 C.P.C. is mandatory and as the plaintiff has failed to comply the same, the learned court below has committed error of jurisdiction in rejecting the prayer of the defendant-petitioner. It has, however, been accepted on behalf of the petitioner that earlier the petition filed by the defendant for a direction to the plaintiff for production of the said document was allowed and the said document was produced by the plaintiff in compliance of the direction of the court.

After considering the submissions and the materials on record, it is manifest that the suit has been filed for specific performance of contract for sale and the basis of the suit is the agreement of sale dated 27.02.2001 said to have been executed by the defendant in favour of the plaintiff. As the said document is the basis of the suit, the same was required to be filed along with the plaint as per the provision of Order 7 Rule 4 C.P.C. In that view of the matter, even when, the said document has already been produced by the plaintiff upon the direction of the court, the prayer on behalf of the defendant for a direction to the plaintiff to produce the said document on affidavit as required under Order 11 Rule 13 C.P.C. is clearly misconceived. The purpose of Order 11 is to shorten the litigation by permitting the parties to file interrogatory with regard to the materials or documents which are in possession of the other side. The legal position with regard to the document on which the suit of the plaintiff itself is based is different in view of the provision of Order 7 Rule 14 C.P.C. where such document is to be filed along with the plaint. Even in view of the submissions on behalf of the petitioner, it appears inconceivable as to when the plaintiff did not produce the document which was the basis of the suit how the defendant was concerned for a direction to the plaintiff to produce the said document by resorting to the provisions of Order 11 C.P.C. instead of praying for dismissal of

the suit on that basis. In the background of aforesaid facts, this Court does not find it a fit case requiring interference under supervisory jurisdiction.

The present application is, accordingly dismissed.

This Court, however, after taking into notice that the suit has been pending since 2007 directs the learned court below to take up the hearing of the suit expeditiously without granting unnecessary adjournment to the parties and make all endeavour to dispose it of preferably within a period of one year.

(V. Nath, J)

Devendra/-

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