

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14127 of 2015

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Dr. Dinesh Prasad Saha

.... Petitioner/s

Versus

Raj Kumar Sah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar @ Alok Kr Shahi

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 11-04-2016

Heard learned counsel, Mr. Sandip Kumar, appearing

for the petitioner and the learned counsel, Mr. Diwakar Upadhyay,
appearing for the respondent.

2. The Sub-Judge, 1st, Bhagalpur in T.S. No. 399 of 2009 rejected the application filed by the plaintiff-petitioner under Order 12 Rule 6 of the C.P.C. for passing the judgment on admission on 04.05.2015.

3. It appears that the plaintiff-petitioner filed the aforesaid title suit for declaration that the sale deed executed by Smt. Prakash Mani Devi in favour of the respondent is illegal, without consideration and null and void. The defendant contested the suit alleging that in fact, the sale deed was executed on 09.11.2005. The respondent paid four cheques amounting to Rs. 3,18,000/-. However, prior to presentation of the said four cheques, the vendor i.e. Smt. Prakash Mani Devi died on 17.11.2005, therefore, the amount was withdrawn by the

defendant.

4. During this period, an application under Order 12 Rule 6 C.P.C. filed by the plaintiff-petitioner alleging that since the defendant has admitted the fact that the consideration amount was not paid and the cheques were not encashed, the sale deed is without consideration, as such, is liable to be set aside and the plaintiff's suit be decreed on admission. The defendant filed objection to the said suit. By the impugned order, the court below has rejected the application under Order 12 Rule 6 C.P.C. and refused to pass the judgment.

5. It may be mentioned here that Section 54 of the Transfer of Property Act defines that "sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised. Therefore, ownership can be transferred by registration of sale deed, if the vendee promises to pay the consideration amount and the vendor agreed to it. In the present case, admittedly, four cheques were handed over. The sale deed was registered prior to encashment of the consideration amount. Therefore, in the fact and circumstances of the case, in the present case, the issue to be decided is whether by registration of the sale deed passed to the defendant or not. It is not universal law that in all cases, if the considerations amount is not paid, title will not pass.

6. In the present case, the defendant's case is that there are 8 heirs of the deceased-vendor Smt. Prakash Mani Devi and all of them are not joint in this suit filed by the plaintiff and the plaintiff is pressing hard only to obtain the entire consideration amount alone and, therefore, the respondent has also taken objection that suit is bad for non-joinder of necessary party. I, therefore, find that it is not a case for passing the judgment under Order 12 Rule 6 C.P.C. The issue aforesaid is to be interpreted only after evidences are produced by the parties. Therefore, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this writ application is dismissed.

7. However, any observation made by the court below in the impugned order and by this Court in this order will not prejudice any of the parties at the time of hearing of the suit in the court below.

(Mungeshwar Sahoo, J)

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