

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10307 of 2014

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Santosh Prasad son of Late Hari Prasad Sah resident of mohalla- Mundichak, P.S.-
Kotwali, District Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate Bhagalpur.
2. Member, Permanent Lok Adalat, Bhagalpur
3. Chairman, District Legal Services Authority, Bhagalpur
4. Sri Banbari Lal Sharma son of Late Arjun Maharaj resident of Mohalla-
Mandroja, P.S.- Kotwali, District- Bhagalpur
5. Govind Sharma son of Sri Banwari Lal Sharma son of Late Arjun Maharaj
resident of Mohalla- Mandroja, P.S.- Kotwali, District- Bhagalpur
6. Smt. Chandrama Sharma wife of Sri Badri Prasad Sharma and daughter of Late
Arjun Maharaj resident of Mohalla- Mandroja, P.S.- Kotwali, District-
Bhagalpur
7. Smt. Usha Sharma wife of Late Atma Ram Sharma and daughter of Late Arjun
Sharma resident of Mohalla- Mandroja, P.S.- Kotwali, District- Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Navjot Yesu, Adv.

For the Respondent/s : Mr. Md. N. Hoda khan-S.C.-18

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-11-2016

Heard learned counsel for the petitioner.

This application under Article 227 of the Constitution of India has been filed praying for quashing of the order dated 11.05.2006 and award of the same date passed by Lok Adalat Bhagalpur in T.S. (partition) No. 118 of 2005 disposing of the partition suit in accordance with the compromise petition dated

04.04.2006 filed by the parties.

This application has been filed on 24.06.2014 before this Court.

The averments made in the application disclose that the petitioner was inducted as tenant in the premises by respondent no. 4 in accordance with the agreement dated 01.12.2005 for running a shop and later on, there was an oral agreement for sale of the tenanted premises whereby respondent no. 4 agreed to sell the same to the petitioner for consideration money of Rs. 105000/-. The petitioner has however claimed to have paid altogether Rs. 124007/- to the respondent no. 4 for purchasing the shop in question as stated in paragraph 9 of the application. It has been further averred that by partition the shop in question had been allotted to the respondent no. 4 but the son of respondent no. 4 in connivance with respondent no. 4 filed partition suit no. 118 of 2005 wherein a compromise petition was also filed by the parties to the suit on 04.04.2006. It has however, been alleged in the present application that the said compromise petition was filed by respondent no. 5 by forging the signature of respondent nos. 6 and 7. It has been further stated that later on, respondent no. 5 with an intention to play fraud also filed a petition in the court praying for transfer of the partition suit before the Permanent Lok Adalat. The partition suit thereafter was transferred to the

Permanent Lok Adalat which according to the petitioner has passed the impugned order and award dated 11.05.2006. It has been further alleged that respondent no. 5 produced some other ladies impersonating as respondent nos. 6 and 7 and obtained the award in question by fraud.

It has been further the case of the petitioner that the Title Eviction Suit No. 09 of 2007 has been filed by respondent no. 5 seeking a decree for eviction of the defendant from the tenanted premises on the ground of personal necessity wherein respondent no. 5 has claimed that the said premises has been allotted in his share by the award in question. The petitioner has further stated that he filed a petition dated 07.12.2012 in the Title Eviction Suit No. 09 of 2007 bringing the facts of collusion and fraud in the compromise petition and award in question as played by respondent no. 5 but the said petition was rejected by the court on 09.04.2014.

In the aforesaid factual background, the present application has been filed for the relief, as mentioned above, against the order and award passed by the Permanent Lok Adalat.

By filing a supplementary affidavit, the petitioner besides reiterating the facts by elaboration, has further stated in paragraph 3 that the delay has occurred in filing the present application because the petitioner came to know for the first time on 01.06.2012 regarding

the impugned award by the Lok Adalat Bhagalpur (Annexure-1 and 1/A).

From the averments made in the application as well as in the supplementary affidavit, it is demonstrably clear that the petitioner who has been impleaded as defendant in the Title Eviction Suit No. 09 of 2007 had filed a petition on 07.12.2012 in the said suit praying for amendment in his written statement. As is apparent from the order dated 09.04.2014 (Annexure-7) passed in the said eviction suit, the petitioner had sought to incorporate the facts, by way of amendment in his written statement, questioning the right, title and interest of the plaintiff of that suit (Respondent no. 5 in the present application) on the basis of compromise and award passed by Lok Adalat alleging further that the plaintiff was not the adopted son of Banbari Lal Sharma (respondent no. 4). However, by the said order dated 09.04.2014 (Annexure-7), the petition dated 07.12.2012 filed by the defendant was dismissed and the eviction suit was ordered to be put up for the evidence of the defendant. There is no statement by the defendant that the said order dated 09.04.2014 (Annexure-7) has ever been challenged by the petitioner. In the present application also the petitioner has not sought any relief against the said order and the only relief is for quashing the order and award dated 11.05.2006 of the Lok Adalat.



Examining the matter from another angle also, it is evident that admittedly the petitioner has been inducted as tenant in the shop in question on the basis of the tenancy agreement dated 01.12.2005 (Annexure-2). The petitioner, however, has come out with the case of oral agreement for sale-purchase of the shop in question with the respondent no. 4 and has also claimed to have paid the entire consideration money to the respondent no. 4. Significantly, however, it is not the case of the petitioner anywhere that he had taken any step for getting the sale deed executed in his favour by the respondent no. 4 once after having paid the entire consideration money. From the photo copies of the cheques (Annexure-3) drawn by the petitioner in favour of respondent no. 4 it is transparent that those cheques had been issued in the year 2006 and even after accepting the case of the petitioner to have paid the total consideration money (as stated in paragraph-7 and 9 of the application) in pursuance to the oral agreement for sale-purchase with respondent no. 4, any right which the petitioner according to his own case, might have acquired on that basis had stood barred by limitation. The inference is inevitable, therefore, that the petitioner has not acquired any right, title and interest in the shop in question or in any property which was subject matter of the award passed in T.S. No. 118 of 2005 on the basis of the alleged oral agreement of sale and he was not a necessary party in that

suit. The averments made in the application also do not disclose that the petitioner is representative in any manner of the interest of respondent nos. 6 and 7 against whom, according to the case of the petitioner, the fraud has been played by respondent no. 5 in obtaining the award in question. The materials on record lead to the only conclusion that at the utmost the petitioner might be in possession over the shop in question as tenant according to his own case and the Title Eviction Suit No. 09 of 2007 has been filed by respondent no. 5 seeking eviction decree against the petitioner from the said shop in his tenancy.

In the backdrop of the aforesaid facts and circumstances, this Court holds that the present application is frivolous and has been filed with the sole purpose to circumvent the order dated 09.04.2014 (Annexure-7) passed in the Eviction Suit No. 09 of 2007 and to preempt the proceeding of the said eviction suit by invoking the jurisdiction of this Court under Article 227 of the Constitution of India. This Court, therefore, declines to grant the relief as prayed by the petitioner.

The present application is, accordingly, dismissed.

(V. Nath, J)

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