

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5360 of 2015

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1. Radhe Shyam Rai, son of Late Dwarika Prasad Rai, resident of Ward No. 3, Jai Nagar, P.S. Jai Nagar, District Madhubani.

.... Petitioner

Versus

1. Arun Kumar Gupta, son of Late Nageshwar Gupta, resident of Ward No. 8, Jai Nagar, P.S. Jai Nagar, District Madhubani.
2. Om Prakash Khedia, son of Late Sita Ram Khedia, resident of mohalla Kathalbari, P.S. Darbhanga, District Darbhanga.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Rakesh Kumar Chandram
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

3 06-04-2016 Heard learned counsel, Mr. Rakesh Kumar Chandran, for the petitioner.

The Court below by the impugned order dated 16.02.2015 passed by Munsif-II, Madhubani in Eviction Suit No. 3 of 2014 rejected the application filed by the petitioner for stay of the Eviction Suit No. 3 of 2014 during the pendency of Title Suit No. 176 of 2011, the suit filed by the petitioner for specific performance of contract.

According to the petitioner, there is an agreement for sale between the parties in the year 2001 and pursuant to the agreement Rs. 2 lakhs was paid as earnest money and the remaining consideration amount of Rs. Two lakhs was paid in the

year 2007 and thereafter pursuant to the agreement, the petitioner was given possession of the suit property.

It may be mentioned here that the suit for specific performance of contract has been filed in the year 2011 i.e after 10 years. The Hon'ble Supreme Court in similarly situated case of **FGP LTD. Vs. SALEH HOOSEINI DOCTOR (2009) 10 Supreme Court Cases 223** has held that the rationale of the equitable doctrine of part-performance in English law and as applicable in India via Section 53-A is that the act or action relied upon as "evidencing part-performance must be of such nature and character that its existence would establish the contract and its implementation. The crucial act or action must be of such a character as to be unequivocally referable to the contract as having been performed in performance of the contract. The act relied upon by the party invoking the said doctrine must be such as by its own force to show the very existence of the same contract.

In the present case, the fact is same and the suit for specific performance has been filed in the year 2010 i.e. eleven years after the so called contract and the petitioner is claiming possession pursuant to the said agreement. It appears that in the same case also the Hon'ble Supreme Court refused to stay of the

eviction suit during the pendency of the suit for specific performance of contract.

This Court also in the case of Shri Niawah Singh Vs. Shri Chandradeo Singh, 2006 (4) PLJR 129, has held that because a suit for specific performance is pending, the subsequent eviction suit cannot be stayed as the suit for specific performance is not pertaining to a right in the present time and the right in a party is only created once a decree is passed.

In view of the above settled proposition already laid down by the Hon'ble Supreme Court as well as by the High Court, I find no reason to interfere with the impugned order. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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