

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.910 of 2016

IN

Civil Writ Jurisdiction Case No. 1141 of 2013

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Jainendra Prasad Gupta @ Jayanandan Prasad Gupta Son of Late Ram Saran Sao
resident of Mohalla - Bakarganj, Bajaja, P.O. - Bankipur, P.S. Pirbahore, District -
Patna.

.... Appellant

Versus

1. Jaggu Sao Son of Late Lakhan Sao resident of Mohalla - Bankipur, Golghar,
Chouraha, P.O. - Bankipur, P.S. Gandhi Maidan, District Patna.
2. Prakash Gupta S/o Late Ayodhya Sao Resident of Bankipur, Golghar, P.S. -
Gandhi Maidan, Distt. - Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Saroj Kumar Upadhyay, Advocate.

For the Respondents : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 28-03-2017

Seeking exception to an order dated 01.02.2016 passed by
learned Writ Court in C.W.J.C. No. 1141 of 2013, this appeal has
been filed under Clause-10 of the Letters Patent.

Petitioner is plaintiff in an eviction suit filed before the trial
court and the trial court having decreed the suit for eviction, the
appeal was filed before the Appellate court. During the pendency of
the appeal, execution proceedings were initiated for recovery of
possession of the suit premises. The Appellate court in the pending



appeal, granted stay in execution case on account of the fact that the appeal was pending.

Challenging the interlocutory order of stay granted by the learned Appellate Court, the writ petition was filed and the writ petition having been dismissed, this appeal under Clause-10. Even though, the petitioner preferred appeal under Article 226 of the Constitution, but on perusal of the order passed on 01.02.2016 by the learned writ court, it is crystal clear that the power and jurisdiction exercised by learned writ court is supervisory jurisdiction under Article 227 of the Constitution and finding that during pendency of the appeal, stay of the execution is granted, no error is committed, by the learned Writ court in dismissing the writ petition.

It is a case where learned writ court has exercised the jurisdiction under Article 227 of the Constitution with regard to pending first appeal, and therefore, this appeal under clause-10 is not maintainable. The appeal is, therefore, dismissed.

As far as complaint of the petitioner with regard to payment of various rent is concerned, the question could be looked into by the Appellate Court when the appeal is still pending.

With the aforesaid liberty, the learned Writ court dismissed the writ petition.

In doing so the learned writ court has not committed any error warranting re-consideration.



This appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04-04-2017
Transmission Date	NA

