

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16459 of 2011

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Dhrub Prasad Son of Late Jokhu Sah, resident of mohalla - Naga Road Raxaul,
P.S.- Raxaul, Distt.- East Champaran.

.... Petitioner/s

Versus

1. Shri Bharatvarshiya Varnawal Vaishya Mahasabha Reg. No. 4195/13-1980-81,
Head Office- Shri Varnawal Seva Sadan C.K 65/11 Bari Piari, Varanasi, UP,
through, President Dinanath Varnawal.
2. Dinanath Varnawal, President -Shri Bharatvarshiya Varnawal Vaishya
Mahasabha, Head Office - Shri Varnawal Sadan, Bari Piari , Varanasi U.P.
3. Balmiki Prasad Varnawal S/o Ramji Pd. Varnawal under capacity of power of
Attorney, Shri Bharatvarshiya Varnawal Vaishya Mahasabha, resident of
mohalla- Lohapati, Raxaul P.S. Raxaul, Distt.- Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Baidyanath Thakur, Adv.
For the Respondent/s : M/s Umakant Shukla, S.Suman Raman and
Atul Shankar, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-11-2017

The defendant of Eviction Suit No. 4 of 2008 pending
in the Court of Sub-Judge-I, Motihari, has filed this application for
setting aside the order dated 25.06.2011 whereby and whereunder the
Court below refused to stay the said eviction suit till the disposal of
Title Suit No. 579 of 2009.

2. Heard leaned counsels for the petitioner and the
respondents.

3. The opposite party no. 1 has filed Eviction Suit No. 4
of 2008 against the petitioner and six others for their eviction from the
suit premises mentioned in schedule-II of the plaint. The plaintiff of



Eviction Suit No. 4 of 2008 claims to be owner of the suit premises on the strength of registered deed of gift dated 16.12.1994 executed by one Vidhyawati Kuer in their favour. The plaintiffs of Title Suit No.579 of 2009 claim to be heirs of aforesaid Vidhyawati Kuer, filed a suit against the plaintiff of Eviction Suit No. 4 of 2008 claiming title. The plaintiffs of Title Suit No. 579 of 2009 are neither parties to the said Eviction Suit No. 4 of 2008 nor have prayed to stay the eviction suit. The Court below refused to stay the said earlier instituted eviction suit observing that the provisions of section 10 of the Code of Civil Procedure applies only to subsequently instituted suit. Section 10 of the Code of Civil Procedure reads as follows:-

“10 Stay of suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government] [***] and having like jurisdiction, or before [the Supreme Court].

4. The above provision shows that only the previously instituted suit between the same parties can be stayed. The



controversy in both the suits, is quite different. The plaintiff of Eviction Suit No. 4 of 2008 will succeed only on establishing the relationship of landlord and tenant between the parties. The petitioner before this Court is neither party to the said Title Suit No. 579 of 2009 nor the plaintiff of Title Suit No. 579 of 2009 has prayed to stay the Eviction Suit no. 4/2008 which was filed much earlier to the T.S. No. 579/2009. It is well settled that Section 10 of the Code of Civil Procedure applies only in a case where the whole of the subject matter in both the suits, is identical. The matter in issue is quite different in both the suits and so, I do not find any reason to interfere with the said order.

5. This petition is devoid of merit and is, accordingly, dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	17.11.2017
Transmission Date	

