

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17470 of 2013

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Radhe Shyam Rai

.... Petitioner/s

Versus

Om Prakash Khairia

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 03-10-2017

Heard the learned counsel for the petitioner.

By the impugned order dated 24.07.2013 passed by the learned Munsif II, Madhubani in Eviction Case No.1 of 2012 rejected the application filed by the petitioner under Section 10 of the C.P.C. refusing to stay the eviction suit till the disposal of Title Suit No.176 of 2011.

The petitioner filed suit for specific performance of contract being Title Suit No.176 of 2011 wherein the respondent is defendant. Subsequently, the respondent filed Eviction Case No.1 of 2012 for eviction of the present petitioner from the suit premises.

The defendant of the eviction suit, who is petitioner herein, filed application under Section 10 C.P.C. praying for stay of eviction suit during the pendency of the suit for specific performance. The court below by the impugned order has rejected



the said prayer.

The learned counsel for the petitioner submitted that since there was agreement between the parties and the respondent has agreed to sell the suit property in favour of the present petitioner, the petitioner is in possession of the suit premises as a Mahadadar and since the date of agreement, he is not a tenant of the plaintiff-respondent. In such circumstances, if the eviction suit is decided during the pendency of the suit for specific performance, the petitioner shall suffer serious loss.

It may be mentioned here that the petitioner's suit is suit for specific performance of contract wherein the court will decide as to whether the alleged agreement between the parties is enforceable or not and, therefore, this question which is to be decided by the court below in the suit for specific performance is not at all involved in the eviction suit wherein the question to be decided is whether there is relationship of landlord and tenant between the parties and whether the plaintiff of the eviction suit has been able to prove the ground raised for eviction of the defendant-tenant which are not the issues to be decided in a suit for specific performance of contract. If the argument of the learned counsel for the petitioner is accepted that there is no relationship of landlord and tenant between the parties then the eviction suit is



liable to be dismissed but the petitioner has to prove this fact by way of adducing evidence. However, since this issue involved in eviction suit is not involved in specific performance, there is no question of stay of eviction suit arises.

Thus, I find no jurisdictional error in the impugned order passed by the court below. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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