

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6775 of 2013

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1. Mahesh Prasad Son Of Late Karu Ram Resident Of Mohalla Manpur, Shiv Charan Patwo Lane, Police Station Buniyadganj, District Gaya
 2. Dhalchand Prasad Son Of Late Karu Ram Resident Of Mohalla Manpur, Shiv Charan Patwo Lane, Police Station Buniyadganj, District Gaya

.... Petitioners

Versus

1. Urmila Devi Wife Of Late Vijay Singh Jain Resident Of Manpur Gopalganj Road, Police Station - Buniyadganj, District - Gaya
2. Prakash Kumar Jain Son Of Late Ijay Singh Jain Resident Of Manpur Gopalganj Road, Police Station - Buniyadganj, District - Gaya
3. Santosh Kumar Jain Son Of Late Vijay Singh Jain Resident Of Manpur Gopalganj Road, Police Station - Buniyadganj, District - Gaya
4. Sunil Kumar Jain Son Of Late Vijay Singh Jain Resident Of Manpur Gopalganj Road, Police Station - Buniyadganj, District - Gaya

.... Respondents

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Appearance :

For the Petitioners : Mr. Pramod Kumar, Advocate

For the Respondents : Mr. None.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

12 06-12-2017 This application under Article 227 of the Constitution of India has been filed to quash the order dated 14.01.2013 passed by Sub Judge-IV, Gaya in Title Suit No.103 of 2009 whereby and whereunder the learned Sub Judge stayed the proceeding of aforesaid Title Suit No.103 of 2009 till the disposal of Probate Case No.27 of 2009 filed by respondent no.2.

2. Heard learned counsel for the petitioners and perused the record. Nobody appeared on behalf of the respondents on repeated calls.



3. It appears that the respondent nos.1 to 4 entered into an agreement with the petitioners to sell the land measuring 2830 sq.feet along with building for a total consideration of Rs.10,01,000/-. The petitioners paid an amount of Rs.51,000/- as advance whereafter the Opposite Party Nos.1 to 4 executed a registered deed of agreement on 22.07.2008 and agreed to execute the sale deeds on payment of balance of consideration money by the end of December, 2009. Out of aforesaid four respondents, the respondent nos.3 and 4 abode the terms and terms and condition of agreement and executed a sale deed in favour of the petitioners on 23.06.2009. The remaining respondents did not execute sale deed and so the petitioners gave legal notice through registered post on 10.08.2009 and thereafter filed Title Suit No.103 of 2009 on 11.11.2009 for specific performance of contract.

4. The contention of learned counsel for the petitioners is that after receiving registered legal notice dated 10.08.2009, the respondent nos.1 and 2 filed a Probate Case No.27 of 2009 on 25.08.2004 alleging therein that the suit property was bequeathed in their favour by Vijay Singh Jain, the husband of respondent no.1 and father of respondent nos.3 and 4. In the said probate case, the petitioners have been impleaded as party to the suit. On the petition of respondents the court below has stayed the further



proceeding of Title Suit No.103 of 2009 till the disposal of probate case. The petitioners of probate case no.27 of 2009 is bound by the agreement which they had executed in favour of the petitioners. If the probate is granted in favour of the respondents in that case also they have to execute the sale deed in terms of the agreement of sale. The cause of action and relief in both the cases are quite different and so the court below has erred in staying the suit of the petitioners till the disposal of probate case. I further find that in the agreement in question, the respondents no.1 and 2 have not stated about any will rather they have stated that after the death of Vijay Singh Jain, they came in possession over the suit property. The suit of the petitioners is for specific performance of contract and the decision of probate case does not affect the suit of the plaintiff in any manner.

5. In view of above facts and circumstances, the order staying the Title Suit No.103 of 2009 is not legally sustainable. The impugned order dated 14.01.2013 is therefore set aside and this application is allowed.

(Sanjay Kumar, J)

B.Kr./-

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