

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1469 of 2017

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1. Anand Kumar, S/o Late Lakshman Mahto, R/o Village- Kopa Bazar,
P.S. & P.O.- Kopa Bazar, District- Saran.

.... Appellant/s

Versus

1. Asha Devi, W/o Shri Mahadev Sah, R/o Village Kopa, P.S. & P.O.-
Kopa Bazar, District- Saran, Agent and Karinda of Anil Kumar and Rajan
Kumar, both sons of Mahdadev Sah.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binod Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

2 15-05-2018 Heard Sri Binod Kumar Singh, the learned counsel
for the petitioner.

The petitioner is defendant in Eviction Suit No. 9 of 2001. The petitioner filed a petition in the Eviction Suit No. 9 of 2001 to stay the proceeding of the Eviction Suit till the disposal of Title Suit No. 356 of 2001.

The case of the petitioner is that husband of plaintiff of Eviction Suit No. 9 of 2001 has entered into an agreement for sale and thereafter he constructed the shop on the land and earlier Gumti was put on the land but later on the respondents refused to perform their part in execution of the sale deed and filed suit for Eviction from suit premises. Thereafter, petitioner filed petition for stay of the eviction suit till the disposal of Title Suit No. 356 of 2001, filed for the purpose of specific performance of contract.

The learned counsel for the petitioner submits that in view of provision as contained in Section 53A of the Transfer of Property Act, 1882 the transferor or any person claiming under



him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken of continued in possession, other than a right expressly provided by the terms of contract. It is further submitted that there was no relationship of landlord and tenant between the plaintiff and the petitioner, therefore, further proceeding of Eviction Suit No. 9 of 2001 should be stayed till the disposal of Title Suit No. 356 of 2001.

The only question came for consideration as to whether during the pendency of suit filed by the petitioner for specific performance of contract the earlier suit filed by the plaintiff for evicting the petitioner from the suit premises is liable to be stayed?

The plaintiff has filed the eviction suit for eviction from the suit premises on the ground of personal necessity and default in payment of rent. Thereafter, the petitioner filed Title Suit No. 356 of 2001 for specific performance of contract on the ground that husband of the plaintiff entered into a contract to sale the property and received substantial part of consideration money. In pursuance of the contract the petitioner was put in possession and he constructed the house thereon and running his business. Section 53A of Transfer of Property Act, 1882 clearly debars the transferor or any person claiming under him but the plaintiff denied the genuineness of contract executed by husband of plaintiff. In a suit for eviction relationship of landlord and tenant is to be decided. Once the plaintiff denied the execution of any contract to sale the property on such basis, the tenant, if so inducted by the plaintiff, cannot claim that the Eviction suit is stayed till the disposal of suit filed by him for specific



performance of contract. Therefore, I find that the learned Munsif has rightly rejected the petition of the petitioner for staying the eviction suit.

In the result, this Civil Misc. petition is dismissed being devoid of any merit.

(Prabhat Kumar Jha, J)

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