

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16430 of 2014

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Smt. Lata Sinha wife of Md . Manaur Sah resident of Barikhaghaul, Chakardaha Mor, P.O. Khagaul, P.S. Khagaul, District - Patna.

.... Petitioner/s

Versus

1. Most. Sharfunnisa wife of Late Isa
2. Md. Aftab
3. Md. Firoz
4. Md. Chholu @ Pandia
5. Md. Afroz all sons of Md. Isa
6. Belal Ahmad Ansari son of Late Md. Wazir Ali
7. Md. Manaur @ Md. Manaur Sah son of MD. Quium @ Md. Qeyamuddin All resident of Khagaul, P.O. and P.S. Khagaul, District - Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghib Ahsan, Senior Advocate

For the Respondent/s : Mr. Amrendra Kumar Pathak, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-04-2018

The petitioner has filed this application for setting aside the order dated 02.08.2014 passed by Munsif, Danapur in Title Eviction Suit No.03 of 2012 whereunder the court below stayed the eviction suit till the disposal of Title Suit No.240 of 2011.

2. Heard learned counsel for the petitioner and the respondents.

3. The petitioner is plaintiff of Eviction Suit No.03 of 2012. She has filed the eviction suit against the defendants for their eviction on the ground of default in payment of rent and also for arrears of rent. The defendant appeared and filed a petition on 05.04.2014 for staying the proceeding of eviction suit as a Title Suit bearing no.240 of 2011 filed by them with respect to suit property was pending. The learned counsel for the petitioner submits that in both



the suits have been filed on different cause of action. The petitioner who is plaintiff of Eviction Suit No.03 of 2012 is not party to the Title Suit No.240 of 2011 which is pending in Sub Judge-Ist, Danapur. The land in dispute in both the suits are different. The petitioner has filed the eviction suit against the defendant with respect to a room and verandah standing over plot no.597 of Khata no.119 of village-Bari Khagaul, P.S. Khagaul, district-Patna. The plaintiff of Title Suit No.240 of 2011 has filed the suit for declaration that the plaintiff is absolute owner of the property mentioned in schedule-1 of the plaint. The subject matter of dispute of Title Suit No.240 of 2011 is two decimals land of plot no.596 of Khata no.151. The boundary of both the land are also different and so the court below has committed error in staying the further proceeding of Eviction Suit No.03 of 2012.

4. Learned counsel for the respondents on the other submits that the disputed land in both the suits are common. The plot no.596 of Khata no.151 is adjoining to the plot no.597 of Khata no.119 and are amalgamated. The respondent has already taken step for impleading the plaintiff of Eviction Suit No.03 of 2012 as party to the suit and so the court below considering all these facts have rightly stayed the further proceeding of Eviction Suit No.03 of 2012 till the disposal of Title Suit No.240 of 2011 which was filed much earlier to the eviction suit.

5. After hearing both sides and on going through the copies of plaint of both the suits, I find that the petitioner Smt. Lata Sinha is



not party to the Title Suit No.240 of 2011 which is pending in different Court. The plot number, Khata number and boundary of Eviction Suit No.03 of 2012 is quite different to the suit property mentioned in Title Suit No.240 of 2011. The eviction suit has been filed on the ground of default in payment of rent on the basis of relationship for landlord and tenant. The Title Suit No.240 of 2011 has been filed for declaration of right, title and possession over the same. The provision of Section 10 of CPC is applicable only in a suit in which the matter in issue is directly or circumstantially between the parties are the same. In the case in hand, I find that neither the parties, nor the suit properties nor the issues involved between the parties are common and so Section 10 of the CPC does not apply. The court below has committed error in staying the further proceeding of Eviction Suit No.03 of 2012 till the disposal of Title Suit No.240 of 2012.

6. In view of above discussion, the impugned order is set aside and this application is allowed.

(Sanjay Kumar, J)

B.Kr./-

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