

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17760 of 2010

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Suresh Kumar S/O Late Hardeo Narayan Singh R/O Vill.- Naima, P.S. And P.O.- Ekangarsarai, in the district of Nalanda, at present residing at Jehanabad Town, Mohalla- Gandhi Maidan, established in the land of survey Vill.- Irki, P.S. & P.O. and District- Jehanabad.

.... Petitioner

Versus

Dharmendra Kumar S/O Udhwa Singh, R/O Vill.- Ahiyasha, P.O. and P.S.- Ghosi, District- Jehanabad.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma, Advocate
Mr. Abhishek Anand, Advocate
Mr. Anjani Kumar, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 13-07-2018

The plaintiff of Title Suit No.06 of 1991 pending in the court of Additional Munsif-I, Jehanabad has filed this writ application for quashing the order dated 27.11.2007 whereby and whereunder the learned court below stayed the trial of the aforesaid title suit till the disposal of Second Appeal No.320 of 2000 pending before this court.

2. Heard learned counsel for the petitioner and perused the record. No body appeared for the respondent.

3. The petitioner filed the aforesaid suit before the court below for declaration of his title over the suit property measuring 2 katha 3 dhoor land of plot no.934 of khata no.179. The petitioner



further sought relief to declare that the defendant has not acquired any interest in the suit property on the basis of registered deed of gift dated 02.09.1990 alleged to have been executed by Usha Devi in favour of defendant. In course of trial, the defendant filed a petition under Section 10 of the C.P.C. praying therein to stay the further proceeding of the said suit till the disposal of Second Appeal No.320 of 2000. According to the defendant, the present petitioner (plaintiff) had filed Title Suit No.59 of 1985 on the file of Munsif for declaration of his title and also for declaration with respect to registered deed of gift dated 30.09.1985 executed by Usha Devi in favour of defendant (Dharmendra Kumar) as forged, fabricated and not binding on the plaintiff. The said suit was dismissed against which this petitioner filed first appeal. The said appeal after hearing was allowed. The defendant filed Second Appeal No.320 of 2000 which is presently pending before this court.

4. The learned counsel for the petitioner submits that both the suits were filed by this petitioner against the defendant for declaration with respect to two registered deeds of gift. One of the deed of gift was executed on 30.09.1985 with respect to 1 katha 3 dhoor land which is western portion of plot no.934. The said suit with respect to deed of gift dated 30.09.1985 was dismissed and the Second Appeal No.320 of 2000 is presently pending before this court.



Another suit bearing Title Suit No.59 of 1985 has been filed by this petitioner with respect to registered deed of gift dated 02.09.1990 which covers another 1 katha land of plot no.934 from eastern side. The matter in dispute and cause of action in both the suits are different. The plot no.934 is a big plot and the said two documents were executed on two different occasions and both the documents cover different plots although numbers are same. The evidence required for deciding the present suit is different to the suit which has already been decided. The learned counsel further submits that the learned trial court has misconstrued the facts pleaded by the petitioner (plaintiff). The court below has stayed the trial of present suit only on account of parties and plot number being the same. This suit has been filed with respect to deed of gift dated 02.09.1990 and the second appeal pending before this court relates to the deed of gift dated 30.09.1985.

5. On perusal of documents on record, I find that the Second Appeal No.320 of 2000 relates to registered deed of gift dated 30.09.1985. However, the present suit relates to deed of gift dated 02.09.1990. The plot no.934 is a big land. The present suit relates to 1 katha from eastern portion of said plot, however, the earlier suit relates to deed of gift containing 1 katha 3 dhoor from western side. The court below without considering the nature of dispute has stayed



the suit till the disposal of Second Appeal No.320 of 2000. The decision of Second Appeal No.320 of 2000 will not affect the merit of this case pending before the court below.

6. In view of above discussions, the impugned order staying the trial of Title Suit No.59 of 1985 is set aside and this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	25.07.2018
Transmission Date	

