

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9294 of 2015

In

Civil Revision No.43 of 2015

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Smt. Pratibha Singh wife of Sri Arvind Kumar Singh, Resident of
Panchasheel Nagar Kumhrar, P.S.- Agamkuan , District- Patna.

... .. Petitioner/s

Versus

1. Sri Amit Kumar Singh son of late Baleshwar Singh
2. Smt. Khushboo @ Shila wife of Amit Kumar Singh, Both are resident of
village- Chhab Mathia, P.S.- Mirganj, District- Gopalganj. at present resident
of Panchsheel Nagar, Kumhrar , P.S.- Agamkuan, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar, Adv.

For the Respondent/s : Mr. Neeraj Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date : 06-12-2018

Plaintiff of Eviction Suit No. 7 of 2012 pending in the
court of Sub-Judge-I, Patna has filed this writ application for
quashing the order dated 08.04.2015 whereby and whereunder the
learned court below stayed the further proceeding of Eviction Suit
No. 7 of 2012 till the disposal of Partition Suit No. 686 of 2011.

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

3. Petitioner before this Court who is plaintiff of
Eviction Suit No. 7 of 2012 has filed the aforesaid eviction suit
against the defendant who is full brother of husband of the
petitioner. The respondent appeared and filed a petition praying
therein to stay the further proceeding of eviction suit.



4. It is alleged that the property in dispute was acquired from the income of joint family property. The husband of the petitioner was elder brother of respondent no. 1. He was karta of the family after the death of his father. The respondent no. 1 filed partition suit no. 686 of 2011 for partition of joint family property including the suit premises which is subject matter of eviction suit. In the said partition suit, the present petitioner and her husband are also party. The learned court below considering the provision of section 10 of Code of Civil Procedure has stayed the further proceeding of eviction suit in view of the fact that the partition suit was filed much earlier to the eviction suit of the petitioner.

5. In view of above facts, I find that the court below has not committed any jurisdictional error in staying the proceeding of subsequently instituted suit i.e. Eviction Suit No. 7 of 2012.

6. In this regard, I would like to refer the observation of Hon'ble Apex Court in a case of M/s Chitivalasa Jute Mills v. M/s Jaypee Rewa Cement reported in AIR 2004 Supreme Court page 1687. The Hon'ble Apex Court at para-12 in aforesaid case has observed as follows:-

“The two suits ought not to be tried separately. Once the suit at Rewa has reached the Court at Viskhapatnam, the two suits shall be consolidated for the purpose of trial and decision. The trial Court may



frame consolidated issues. The Code of Civil Procedure does not specifically speak of consolidation of suits but the same can be done under the inherent powers of the Court flowing from Section 151 of the CPC. Unless specifically prohibited, the Civil Court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. The parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials.”

7. Considering the above principles as set by Hon’ble Apex Court, the Eviction Suit No. 7 of 2012 and Partition Suit No.686 of 2011 pending before the court below are ordered to be consolidated for trial and disposal. The writ application is accordingly disposed of.

mkchy/-

(Sanjay Kumar, J)

AFR/NAFR	NAFR
CAV DATE	N/A
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