

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.848 of 2017

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1. Shatrughan Raut, son of Late Ram Sudhishta Raut, resident of Mohalla-Maharajganj, Ward No.10 (old) 13 (new) Town P.S. and District-Madhubani.

.... Appellant/s

Versus

1. Raj Kumar Raut, son of Late Ram Sudhishta Raut, resident of Mohalla-Maharajganj, Ward No.10 (old) 13 (new) Town P.S. and District-Madhubani.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Srivastava

For the Respondent/s : Mr. Anil Kumar Jha, Sr. advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 04-10-2018

Heard both sides.

The petitioner has filed this Civil Misc. petition against the order dated 07.04.2017 passed in Eviction Suit No. 01 of 2010 by learned Munsif-I, Madhubani by which he dismissed the petition of the petitioner for staying further proceeding of Eviction Suit No. 01 of 2010 till the disposal of Title Suit No. 332 of 2012.

The facts, which are relevant for disposal of this Civil Misc. petition, can be reproduced as follows:-

The petitioner is defendant of Eviction Suit No. 01 of 2010. Raj Kumar Raut, plaintiff of the suit and respondent in the present case, filed eviction suit against the petitioner for



evicting him from the suit premises on the ground that he constructed house over the suit premises after partition of the property. During the pendency of the eviction suit, the petitioner filed Title Suit No. 332 of 2012 for partition of the suit property, for declaration of title and for declaration that the suit land mentioned in schedule-5 of the plaint is self acquired property of the petitioner. The petitioner filed petition under Order 39 Rule 1 & 2 of the Code of Civil Procedure in Title Suit No. 332 of 2012 for restraining the defendants, including the respondent of present case, from interfering into peaceful possession of the petitioner but the injunction petition was rejected. Thereafter, the petitioner finding no way out filed petition for stay of Eviction Suit No. 01 of 2010 but the learned Munsif dismissed the petition of the petitioner. Being aggrieved by the aforesaid order, the petitioner has filed this Civil Misc. petition.

The learned counsel for the petitioner submits that respondent and petitioner are own brothers. Raj Kumar Raut filed Partition Suit No. 12 of 2002 and the same was decreed on compromise by the Lok Adalat without allotting any share to the petitioner. The petitioner unsuccessfully challenged the judgement and decree passed by the Lok Adalat before the High Court as well as before the Apex Court. Thereafter, the petitioner filed Title



Suit No. 332 of 2012 for partition of ancestral property as well as for declaration that the land of Khesra No. 3666 mentioned in schedule-5 of the plaint is self acquired property of the petitioner. On such basis the petitioner claimed for stay of the eviction suit. It is submitted that there is dispute between two brothers. The eviction suit is nothing but a vexatious proceeding on flimsy grounds filed by own brother of the petitioner, who sought eviction of the petitioner from the suit premises, after playing fraud and obtaining the decree in partition suit on compromise. Therefore, the learned Munsif has committed jurisdictional error in not staying the eviction suit.

Contending the submission of learned counsel for the petitioner, Mr. Anil Kumar Jha, the learned senior counsel for the respondent, submits that in eviction suit prime consideration is relationship of landlord and tenant. The respondent got the property in partition suit and thereafter constructed house there on. After filing of the eviction suit the petitioner filed Title Suit No. 332 of 2012. On mere filing of Title Suit for declaration of title eviction suit cannot be stayed as in the title suit the question of title is to be decided whereas in the eviction suit the relationship of landlord and tenant is to be decided.

Having considered the submission of both sides and



on perusal of records, it is crystal clear that plaintiff filed the eviction suit claiming the relationship of landlord and tenant between the plaintiff and the defendant but the defendant during the pendency of the eviction suit filed Title Suit No. 332 of 2012 for declaration of title and partition of the property. Only because Title Suit No. 332 of 2012 is pending, the same cannot be a good ground for stay of eviction suit wherein the relationship of landlord and tenant is to be proved. Therefore, I do not find any jurisdictional error in the impugned order. This Civil Misc. petition is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

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