

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18681 of 2010

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1. Punya Kal Singh S/O Jamadar Singh, R/O Village Naini, Post Office - Naini, Police Station - Chapra, Town, Distt. Saran.

.... Petitioner

Versus

1. Narendra Kumar Singh S/O Nagina Singh, R/O Village Dahiawa, Post Office - Chapra Town, Police Station - Chapra Town, Distt. Saran.
2. Shankar Singh S/O Jamadar Singh, R/O Village Naini, Post Office - Naini, Police Station Chapra Town, Distt. Saran.

.... Respondents

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Appearance :

For the Petitioner : Mr. S.S. Dwivedi, Sr. Advocate
For the Respondents : Mr. Ajay Kumar Singh, Advocate
Mr. Rakesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

7 16-01-2018 This writ application has been filed to set aside the order dated 05.01.2007 passed by Civil Judge I, (Junior Division), Saran at Chapra in Title Suit No.103 of 2005 whereby the petition filed by the petitioner to decide the suit on the preliminary issue was rejected.

2. Heard learned counsel for the petitioner as well as the respondents.

3. The respondent 1st party Narendra Kumar Singh filed Title Suit No.103 of 2005 against the petitioner and respondent 2nd party for declaration that the registered sale deed dated 25.01.1990 executed by plaintiff in favour of defendant-petitioner as void and inoperative. The defendant appeared and filed a petition on



01.08.2006 stating therein that the suit is barred by limitation. It has been submitted that the plaintiff himself had executed the sale deed on 15.01.1990 in favour of defendant-petitioner and after a lapse of about 15 years, the present case has been filed. The prescribed period of limitation for filing such type of suit is three years and so the plaint ought to have been rejected under Order VII Rule 11 of C.P.C. The plaintiff filed rejoinder to the said petition which after hearing both the sides was dismissed as per impugned order dated 05.01.2007.

4. On going through the contents of plaint which is annexed as Annexure 1 to the petition, I find that the plaintiff has alleged that he agreed to execute a sale deed for a total consideration of Rs.14,500/-. The defendant-petitioner had no money at that time and so he paid an amount of Rs.500/- as earnest money and agreed to pay balance amount of Rs.14,000/- after execution of the sale deed in his favour. It was also agreed that on payment of balance of consideration money of Rs.14,000/, the defendant was to be put in possession over the said land. The sale deed was drafted at the instance of defendant by a deed writer of his choice. The plaintiff in good faith put his signature and thumb impression as desired by the deed writer. The document was presented before the Sub-Registrar hurriedly as it was getting



late in presenting the same. The plaintiff requested the defendant to make payment of balance of consideration money but the said amount was not paid and so the plaintiff executed a deed of cancellation with respect to the sale deed. The registration receipt/original sale deed remained in possession of plaintiff and title did not pass to the defendant and the sale deed remained incomplete. The plaintiff has asserted that he is in possession of the suit land and the defendant has not acquired any right and title on the basis of said sale deed.

5. The learned counsel for the petitioner, on the other hand, submitted that the defendant acquired right and title immediately on execution of sale deed in his favour. The plaintiff had no right to execute deed of cancellation nor the deed of cancellation affect the right and title of the defendant, which accrued immediately after the sale deed was executed. The learned court below ought to have rejected the plaint under Order VII Rule 11 of C.P.C. as it was presented beyond the prescribed period of limitation.

6. The court below while rejecting the petition of petitioner has observed that there is a mixed question of law and fact to be determined, which is possible after trial. The plaintiff has asserted that the document remained in his possession as the



entire amount was not paid to him. The contention of learned counsel is that the title had to pass only on payment of full consideration money and so the period of limitation of three years for presenting the plaint is not applicable in the present case. The court below on being satisfied with the pleadings has admitted the plaint. The plea of non-maintainability of suit is a mixed question of law and fact and so the court below has rightly observed that this would be decided only after considering the oral and documentary evidence of both the parties.

7. In view of above facts and circumstances, I do not find any illegality in the impugned order requiring any interference. This writ application is devoid of merit and is, accordingly, dismissed.

(Sanjay Kumar, J)

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