

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19347 of 2014

=====

Most. Fulwa Devi W/o Late Gajadhar Mahto @ Gajo Mahto, resident of village-
Aaijhee, P.S.- Kirama (Sheikhpur), District- Sheikhpura.

.... Petitioner/s

Versus

Haro Mahto Son of Late Barho Mahto, resident of village- Aaijhee, P.S.- Korma
(Sheikhpura), Distt.- Sheikhpura.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dr. Anjani Pd. Singh and Sweta, Adv.

For the Respondent/s : Mr. Ranjit Jha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 30-08-2018

Petitioner before this Court is defendant in Title Suit No.40 of 2013 pending in the court of Sub-Judge-I, Shekhpura. She has filed this application for quashing the order dated 08.09.2014 whereby and whereunder her petition filed under section 10 read with section 151 of Code of Civil Procedure was rejected and the learned court below refused to stay the further proceeding of Title Suit No. 40 of 2013 till the disposal of Second Appeal No. 549 of 2010 pending before this Court.

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

3. It appears that the petitioner filed a title suit bearing No. 1 of 1996 before the Sub-Judge-I, Sheikhpura for cancellation of



deed of gift dated 14.08.1995 purported to be executed by her in favour of Haro Mahto. The said suit was decreed on 27.09.2005. The respondent-Haro Mahto filed a title appeal bearing No. 13 of 2005 before the District Judge which was allowed and the judgment passed by the court below was set aside. The petitioner being aggrieved by the judgment of 1st appellant court filed Second Appeal No. 549 of 2010 before this Court against the respondent-Haro Mahto. During the pendency of said litigation, the petitioner-Most. Fulwa Devi executed a registered sale deed in favour of Kaushalya Devi on 14.05.2013 with respect to 4 acre 89 decimal land. The respondent-Haro Mahto filed Title Suit No. 40 of 2013 against the said Kaushalya Devi for declaration of said sale deed as fraudulent, illegal and not binding on the plaintiff (Haro Mahto). The present petitioner is also party in the said suit, as the document in question was executed by her. The petitioner filed a petition under section 10 read with section 151 of Code of Civil Procedure praying therein to stay the further proceeding of title suit till the disposal of second appeal pending before this Court. The learned court below rejected the said prayer against which the present writ application has been filed.

4. On going through the impugned order and the documents on record, I find that the second appeal pending before this Court relates to cancellation of deed of gift executed by the present



petitioner in favour of Haro Mahto. The deed of gift was executed on 14.08.1995 with respect to 4 acre 89 decimal land. The claim of the plaintiff in the said case is that the deed of gift was fraudulently brought into existence by impersonating the petitioner by setting a different lady. The respondent filed subsequent title suit bearing no. 40 of 2013 for declaration of registered sale deed executed by petitioner in favour of Kaushalya Devi as forged and fraudulent. The said Kaushalya Devi is not party to the second appeal. Thus, I find that cause of action, relief claimed by parties are quite different and so the petition under section 10 of Code of Civil Procedure is not sustainable and the same has been rightly rejected by the learned court below.

5. In view of above discussions, I do not find any merit in this application and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04/09/2018
Transmission Date	N/A

