

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1609 of 2016

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1. Kashinath Pandey S/o Late Damodar Pandey
2. Saudamini Devi W/o Kashinath Pandey Both residents of Village, P.S. and P.O. : Garva, Dist : Saran, Chapra, Bihar, presently at Prabhunath Nagar, North Dahiyaon Tola, P.O.: Prabhunath Nagar, P.S.: Chapra, Dist : Saran, Chapra, Bihar.

.... Petitioner/s

Versus

1. Ram Pukar Gupta S/o Late Rajeshwar Prasad Gupta
2. Pawan Kumar Gupta S/o Late Rajeshwar Prasad Gupta
3. Santosh Kumar Gupta S/o Late Rajeshwar Prasad Gupta
4. Chandan Kumar Gupta S/o Late Rajeshwar Prasad Gupta
5. Sanjay Kumar Gupta S/o Late Rajeshwar Prasad Gupta
6. Siya Sundari Devi W/o Late Rajeshwar Prasad Gupta
7. Kiran Devi W/o Sunil Kumar, D/o Late Rajeshwar Prasad Gupta
8. Shobha Devi W/o Sitaram Prasad, D/o Late Rajeshwar Prasad Gupta All residents of Mauna Colony, Sada Road, P.O. and P.S. Chapra Nagar, Dist : Saran, Bihar.
9. Upendra Nath Pandey S/o Doodh Nath Pandey R/o P.O. and P.S. : Garva, Dist : Saran, Chapra, Bihar, Presently at Prabhunath Nagar, North Dahiyaon Tola, P.O.: Prabhunath Nagar, P.S. : Chapra, Dist : Saran, Chapra, Bihar.
10. Vijay Kumar Mishra S/o Rajgriha Mishra R/o Village and P.O. - Mubarakpur, P.S. Madaura, Dist : Saran, Bihar.
11. Rajesh Kumar Singh S/o Late Amardev Singh Village : Aamal Karamwari Patti, P.O. - Aami, P.S. - Avtar Nagar, Dist : Saran, Chapra.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Satish Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

3 24-09-2018 Heard both sides.

The petitioners filed this civil miscellaneous petition against the order dated 07.09.2016 passed in Eviction Suit No.1 of 2010 by which the learned Sub Judge VI, Chapra stayed the further proceeding of Eviction Suit No.1 of 2010 holding that in



sum and substance issues in eviction suit as well as Title Suit No.61 of 2003 and Partition Suit No.491 of 2004 are same and similar.

The relevant facts are that the petitioners purchased the suit land from one Harihar Mistri in the year 1979. Harihar Mistri had executed a deed of surrender in favour of his wife, Monga Devi but the deed of surrender was never acted upon. Ramjilal Gupta got a fraudulent deed of Mahadanama prepared in his favour said to have been executed by Monga Devi and filed a Title Suit No.125 of 1972. Monga Devi appeared and denied to have executed any deed of Mahadanama in favour of Ramjilal Gupta. During the lifetime of Harihar Mistri, the respondents were tenant. Pawan Kumar Gupta, respondent No.2 filed Title Suit No.61 of 2003 for declaration of title against Rampukar Gupta and others thereafter, Rampukar Gupta filed Partition Suit No.491 of 2004 against Pawan Kumar Gupta and others. When the petitioners came to know about the title suit and partition suit, the petitioners filed an intervention petition for being impleaded in the suit and the petitioners were made party-defendants in title suit as well as partition suit. Thereafter, the respondents filed petition under Section 10 C.P.C. for stay of further proceeding in Eviction Suit No.1 of 2010 which was filed by the petitioners for eviction of the



respondents from the suit premises but the learned Sub Judge passed the impugned order staying the further proceeding of eviction suit.

Learned counsel for the petitioners submits that in the suit for partition and title suit issues are quite different and eviction suit filed by the petitioners, the issue is whether there is relationship of landlord and tenant between the plaintiff and defendant. Therefore, the learned Sub Judge has committed jurisdictional error in staying the further proceeding of Eviction Suit No.1 of 2010 under Section 10 the C.P.C.

Mr. Bashisth Narain Mishra, learned counsel for the respondent Nos.2 to 8 and Mrs. Rajni Kumari, learned counsel for the respondent No.1 submits that the question of title is involved, therefore, the Court has rightly stayed the further proceeding of eviction suit.

On consideration of submission of both sides, one and only one question arises for consideration as to whether the eviction suit during the pendency of Title Suit No.61 of 2003 and Partition Suit No.491 of 2004 is liable to be stayed in view of the provision as contained in Section 10 of the C.P.C.?

Section 10 of the C.P.C. reads as follows:

Stay of suit: No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under



whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

On bare perusal of the provisions as contained in Section 10 C.P.C., the question for staying the further proceeding of the subsequent suit is that directly and substantially issue in the previously instituted suit is the same and similar. Admittedly, Pawan Kumar Gupta filed title suit for declaration of title against his brother, Rampukar Gupta and others on the disputed land. Immediately thereafter, Rampukar Gupta filed partition suit against his brother and others with regard to the same land. Initially the petitioners were not the party in title suit or partition suit but petitioner having come to know about the pendency of the title suit and the fact that brothers are collusively litigating with each other for declaration of title over the lands purchased by him from Harihar Mistri, the petitioner filed petition for intervention to be impleaded as defendant and the same was allowed. Petitioners thereafter filed the suit for eviction stating that the respondents are their tenants and they have been paying rent to his vendor and thereafter to the petitioners. Therefore, I find that the issue in the eviction suit is not substantially same and similar as in the title suit and in this view of the fact, I find that learned Sub Judge has



committed jurisdictional error in staying the further proceeding of Eviction Suit No.1 of 2010.

Accordingly, the order dated 07.09.2016 passed in Eviction Suit No.1 of 2010 is set aside. This civil miscellaneous petition is accordingly allowed.

It goes without saying that any finding in this civil miscellaneous in no way prejudice the parties in the suit.

(Prabhat Kumar Jha, J)

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