

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1299 of 2016

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1. Dina Nath Gupta Son of late Vishwanth Prasad Resident of Village- Sadar Bazar,
Danapur Cantt, P.S- Danapur, District Patna-801503.

.... Appellant/s

Versus

1. Sajda Parveen Wife of late Jamil Hassan
2. Imran Hassan Son of late Jamil Hassan Both Resident at Village- Bibiganj
Dalwar Road, Danapur Cantt, P.S.- Danapur Cantt, District- Patna-801503

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abinash Kumar

For the Respondent/s : Mr. Partha Sarthy

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 26-10-2018

Heard Mr. Abinash Kumar, the learned counsel for the
petitioner, and Mr. Partha Sarthy, the learned counsel for the
respondents.

2. The petitioner has filed this Civil Misc. petition
against the order dated 28.07.2016 passed by learned Sub Judge-IV,
Danapur in Title Eviction Suit No. 4 of 2013 by which the learned
Sub Judge dismissed the petition of the petitioner for recalling the
order dated 29.02.2016 passed in the same suit by which further
proceeding of Title Eviction Suit No. 4 of 2013 has been stayed till
the disposal of Title Suit No. 140 of 2013.

3. The relevant facts can be summarized as follows:-

The petitioner is the plaintiff of the eviction suit. The



petitioner filed the suit for eviction of the defendants on the ground of personal necessity and default in payment of rent. The plaintiff stated in the plaint that Mahmood fell in need of money and he with consent of his sister, Sagra, sold the land mentioned in schedule of the plaint in favour of Radhika Devi and Kedar Nath Gupta, mother and brother of the plaintiff, through two registered sale deeds dated 19.02.1986 and 20.02.1986. Later on partition took place and the property fell in the share of the plaintiff. The plaintiff inducted tenant, Jamil Hasan, husband of defendant/ respondent No.1 and father of defendant/ respondent No.2 as month to month tenant at monthly rental of Rs. 100/- per month in May, 1988. Later on the defendants defaulted in payment of rent and the plaintiff also required the suit premises for his own use and occupation and, thus, he filed the suit. The defendants appeared and filed written statement denying the relationship of landlord and tenant. The defendants stated that they filed Title Suit No. 140 of 2013 for declaration that the two sale deeds executed by Mahmood in favour of mother and brother of plaintiff in the year 1986 are illegal, void ab initio and not binding on them. During the pendency of the suit, the defendants filed petition under Section 10 of the Code of Civil Procedure to stay the further proceeding of Title Eviction Suit No. 4 of 2013. The learned Sub Judge after hearing the parties stayed the further proceeding of Title Eviction Suit No. 4 of



2013 vide order dated 29.02.2016. The petitioner/ plaintiff filed petition on 13.06.2016 under Section 151 of the Code of Civil Procedure for recalling the order dated 29.02.2016 on the ground that the eviction suit cannot be stayed during the pendency of the title suit filed for declaring the two sale deeds executed by the landlord as void and illegal as in the eviction suit the relationship of landlord and tenant is to be decided whereas in the title suit the title of the plaintiff is in question. If the plaintiff failed to prove the relationship of landlord and tenant between the plaintiff and defendants the suit is bound to be dismissed but the learned Sub Judge by the impugned order dismissed the petition of the petitioner/ plaintiff for recalling the order dated 29.02.2016 holding, in sum and substance, that issues in the title suit are same and the order dated 29.02.2016 is not passed on any misrepresentation of facts. Being aggrieved by the aforesaid order the petitioner moved this court by filing this Civil Misc. petition.

4. The learned counsel for the petitioner submits that there is no dispute with regard to the fact that petitioner filed Title Eviction Suit No. 4 of 2013 on the ground of personal necessity as well as on the ground of default in payment of rent. In the eviction suit the title of the plaintiff cannot be decided. The defendants filed Title Suit No. 140 of 2013 for declaration that the two sale deeds executed by Mahmood in favour of Radhika Devi and Kedar Nath



Gupta are void and illegal. The plaintiff claimed title over the land by virtue of the aforesaid two sale deeds. Therefore, in the title suit the issues are quite different and the eviction suit cannot be stayed in view of provisions as contained in Section 10 of the C.P.C. The learned counsel for the petitioner in support of his submission placed reliance on the judgement of the Supreme Court rendered in the case of **Radha Devi v. Deep Narayan Mandal & Ors** reported in **2004 (1) PLJR SC 28** in which it has been held that the eviction suit is to be decided in view of the provision as contained in Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 and in the eviction suit the landlord is required to prove contract of tenancy as also the grounds on which eviction is sought for and in eviction suit the court is not required to go into the serious question of title. Therefore, the eviction suit is not required to be stayed during the pendency of title suit.

5. On the other hand, Mr. Partha Sarty, the learned counsel for the respondents, submits that, of course, in the eviction suit the landlord/ plaintiff is required to prove the relationship of landlord and tenant and the serious question of title cannot be decided but the defendants of the eviction suit have also filed title suit for declaring the two sale deeds executed in favour of mother and brother of the petitioner/ plaintiff as void and illegal and, therefore, in sum



and substance, the plaintiff in the eviction suit sought eviction of the defendant without declaration of title.

6. On the submission of both sides, the sole question arises for consideration in this petition that whether the learned Sub Judge is legally justified in staying the further proceeding of Title Eviction Suit No. 4 of 2013 during the pendency of Title Suit No. 140 of 2013 filed by the defendant of the eviction suit for declaration that the two sale deeds executed in favour of plaintiff of the eviction suit are void and illegal?

7. In order to decide the question firstly I reproduce Section 10 of the Code of Civil Procedure which reads as follows:-

*10. "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]"*.

8. From a bare perusal of the provision as contained in Section 10 of the Code of Civil Procedure it is evident that for stay of subsequent suit the requirement is that in subsequent suit the matter in issue is also directly and substantially in issue in previously instituted



suit between the same parties. The defendants of the eviction suit filed Title Suit No. 140 of 2013 prior to institution of the eviction suit for declaration of two sale deeds executed by Mahmood in favour of Radhika Devi and Kedar Nath Gupta, mother and brother of the plaintiff, of the eviction suit. In the eviction suit which was filed subsequently the issue in sum and substance is non payment of rent or default in payment of rent as also personal necessity of the plaintiff on which the plaintiff sought eviction of the defendants from the suit premises. Of course, the plaintiff claimed title over the suit land and induction of tenant in the suit premises at monthly rent after purchasing the suit land in the name of his mother and brother in the year 1986 but the issue in the eviction suit is relationship of landlord and tenant and the landlord is to prove the contract between the landlord and tenant whereas in the title suit the defendants sought declaration that the two sale deeds are illegal and void ab initio. Therefore, in the title suit, in sum and substance, the issues are not same which are in the eviction suit.

9. Thus, I find that the learned Sub Judge has committed jurisdictional error in rejecting the petition of the petitioner for recalling the order dated 29.02.2016 by which he stayed the further proceeding of Title Eviction Suit No. 4 of 2013 holding that, in sum and substance, the issues in both suits are same and similar.



Accordingly, the order dated 28.07.2016 and the order dated 29.02.2016 passed by learned Sub Judge-IV, Danapur in Title Eviction Suit No. 4 of 2013 are set aside. This Civil Misc. petition is, thus, allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.10.2018
Transmission Date	N.A.

