

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1193 of 2017

Shiv Narayan Singh, S/o late Saukhi Rai, R/o Village- Mahuli, P.S. Didarganj,
District- Patna.

... .. Petitioner/s

Versus

Shiv Nath Prasad, S/o Jamuna Prasad Singh, Resident of Village- Mahuli,
P.S.- Didarganj, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Raj Dular Sah, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 16-01-2024

Heard learned counsel for the petitioner on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed on behalf of the petitioner for setting aside the order dated 24.04.2017 passed by the learned Sub-Judge-III, Patna City in Title Suit No. 391 of 2011 whereby and whereunder the petition filed under Section 10 along with Section 151 of the Code of Civil Procedure by the petitioner/defendant has been rejected.

3. The case of the petitioner, as it appears from the record, is that the respondent Shiv Nath Prasad has filed Title Suit No. 391 of 2011 for specific performance of contract against the petitioner/defendant claiming that the petitioner/defendant received a sum of Rs. 1,41,000/- as earnest money and executed an agreement for sale dated 26.05.2004 promising to execute the sale



deed for the suit property. Another title suit bearing Title Partition Suit No. 294 of 2016 was filed by one Mohan Rai which is pending in the court of learned Sub-Judge-IV, Patna City and in the said suit the petitioner is again defendant and the share of the defendant is to be ascertained in the joint family property. The petitioner has filed a petition under Section 10 along with Section 151 of CPC seeking stay on proceeding of Title Suit No 391 of 2011 stating therein that in Title Partition Suit No. 294 of 2016, the share of the defendant and plaintiff of Title Suit No. 391 of 2011 are to be decided. It has further been prayed that plaintiff be directed not to adduce his evidence until share of all co-sharer are decided in the partition suit as prior to the demarcation of share, the petitioner/defendant has no right or title to sale. In this manner the petitioner/defendant has filed the present petition to stay the Title Suit No. 391 of 2011 till the disposal of Title Partition Suit No. 294 of 2016. The prayer of the petitioner/defendant was rejected by the learned trial court vide the impugned order dated 24.04.2017.

4. Learned counsel for the petitioner submits that since the share of the petitioner is to be decided in the partition suit, he has got no right to transfer the same even if he entered into an agreement of sale with the respondent/plaintiff. So it was in the interest of justice that the suit filed for specific performance



against the petitioner be stayed.

5. The dispute in the present case is within a very narrow compass. Whether the learned trial court was right in rejecting the prayer for stay in the Title Suit No. 391 of 2011 filed by the respondent for specific performance of contract against the petitioner during the pendency of Title Partition Suit No. 294 of 2016.

Section 10 of CPC reads as under:-

*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 ¹[India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of ¹[India] established or continued by ²[the Central Government ³***.] and having like jurisdiction, or before ⁴[the Supreme Court].*

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in ¹[India] from trying a suit founded on the same cause of action.

6. Bare reading of the provision of Section 10 shows there could be a stay on proceedings of subsequent suit when the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between the parties under whom they or any of them already claim litigating



under the same title. Obviously the same is not case here since the petitioner sought stay on the proceedings of previous suit instead of proceedings in a subsequent suit. The same is not permissible as it is against the specific provision of law.

7. Hence, I have no hesitation in holding that the learned trial court has rightly rejected the petition of the petitioner and, accordingly, the same is affirmed.

8. In the result, the instant petition stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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