

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.736 of 2019

1. Sri Bijay Kumar Lal S/o Late Babulal Sah R/o Mohalla-Champa Nagar Tanti Bazar Road Nagar, P.S. Nath Nagar, District-Bhagalpur
2. Sri Binay Kumar Lal Son of Late Babulal Sah R/o Mohalla-Champa Nagar Tanti Bazar Road Nagar, P.S. Nath Nagar, District-Bhagalpur

... .. Petitioner/s

Versus

2. Smt. Shanti Devi W/o Sri Shiv Shankar Thakur R/o Champa Nagar, M.T.N. Ghosh Road, P.S. Nath Nagar, District-Bhagalpur
3. Sri Sanjay Kumar Thakur S/o Lat Bhola Thakur R/o Champa Nagar, M.T.N. Ghosh Road, P.S. Nath Nagar, District-Bhagalpur
4. Sri Chandra Shekhar Sharma S/o Sri Shiv Shankar Thakur R/o Champa Nagar, M.T.N. Ghosh Road, P.S. Nath Nagar, District-Bhagalpur
5. Smt. Chanda Devi W/o Sri Shankar Thakur R/o Champa Nagar, M.T.N. Ghosh Road, P.S. Nath Nagar, District-Bhagalpur
6. Smt. Shyama Devi W/o Sri Sanjay Kumar Thakur R/o Champa Nagar, M.T.N. Ghosh Road, P.S. Nath Nagar, District-Bhagalpur
8. Sri Shankar Thakur S/o Late Ganga Thakur R/o Champa Nagar, M.T.N. Ghosh Road, P.S. Nath Nagar, District-Bhagalpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Singh, Advocate
		Mr. Abhishek Kumar Singh, Advocate
For the Respondent/s	:	Mr. Diwakar Upadhyaya, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

8 30-04-2024 Heard learned counsel appearing on behalf of the petitioners as well as learned counsel appearing on behalf of the respondents.

02. The instant Civil Miscellaneous petition has been filed under Article 227 of the Constitution of India for quashing the order dated 03.11.2018 passed by the learned Sub Judge- V, Bhagalpur in Title Suit No. 22 of 2004, whereby and

whereunder the learned Sub Judge-V, Bhagalpur rejected the petition dated 21.06.2018 filed on behalf of the defendants/petitioners to recall the order dated 27.04.2017 passed in Title Suit No. 22 of 2004 and further imposed a cost of Rs. 5000/- to the petitioners.

03. Learned counsel appearing on behalf of the petitioners submits that two suits are being contested between the parties, one is Title Suit No. 22 of 2004 and another is Title Eviction No. 01 of 2009. The petitioners moved before the learned District Judge, Bhagalpur by filing an application for analogous hearing of these two suits. Vide order dated 24.04.2017, the learned District Judge, Bhagalpur ordered for transfer of case record of Title Eviction No. 01 of 2009 from the Court of learned Sub-Judge-XI, Bhagalpur to the Court of learned Sub-Judge-V, Bhagalpur where the Title Suit No. 24 of 2004 has already been pending.

Learned counsel further submits that the defendants/petitioners have been making proper pairvi in the Title Suit No. 22 of 2004. The evidence of the plaintiffs was closed on 06.04.2011 and on 25.04.2011, the suit was fixed for the evidence of the defendants/petitioners. Learned counsel further submits that thereafter an amendment petition was filed

on behalf of defendants/petitioners on 20.05.2011 which was allowed by the order dated 03.06.2011. Thereafter the plaintiffs/respondents filed an application to recall the P.W. 7 to exhibit some documents vide application dated 21.10.2011 which was disposed vide order dated 28.02.2012. On 13.06.2012 the petitioners filed a petition for issuance of Dasti summons to the witnesses. Accordingly, Dasti summons were issued vide order dated 10.01.2013 and thereafter, on 06.03.2013 affidavits of one of the witnesses of defendant side was filed. Learned counsel further submits that thereafter the Presiding Officer of the Court was transferred and the Court became vacant and the case was adjourned for this reason till 09.02.2015 when the Title Suit No. 22 of 2004 was transferred to the learned Sub-Judge-VIII, Bhagalpur. Due to transfer of learned Sub-Judge-VIII, Bhagalpur, the court again became vacant and the title suit was transferred on 21.04.2005 to the Court of learned Sub-Judge-VII, Bhagalpur where it remained pending till 06.08.2015. Again on 06.08.2015, the case was transferred to the Court of learned Sub-Judge-III, Bhagalpur by the orders of the learned District Judge, Bhagalpur where it remained pending till 08.11.2016. On 16.11.2016, the title suit was transferred to the Court of learned Sub-Judge-V, Bhagalpur

and fixed on 16.12.2016. On 16.12.2016 a formal order was passed and the case was fixed for hearing on 20.01.2017. On that date a petition was filed by defendants/petitioners informing the Court that a petition has been filed before the District Judge, Bhagalpur for transfer of Title Eviction Case No. 01 of 2009 alongwith the Title Suit No. 22 of 2004 and prayer for time was made. Learned counsel further submits that on 02.03.2007 the petitioners filed Misc. Transfer Petition No. 05 of 2017 in the Court of learned District Judge, Bhagalpur with a prayer that Title Suit No. 22 of 2004 and Title Eviction Case No. 01 of 2009 might be heard together either by learned Sub-Judge-V, Bhagalpur or by learned Sub-Judge, XI, Bhagalpur where Title Eviction Case No. 01 of 2009 is pending. On 20.01.2017 the case was adjourned and fixed on 03.03.2017 in the Court of Sub-Judge-v, Bhagalpur and on that date the petitioner informed the Court about filing of Misc. Transfer Petition No. 05 of 2017. On 03.03.2017 the case was adjourned for 07.04.2017 and thereafter it was fixed for evidence of defendants/petitioner on 27.04.2017. Meanwhile, Misc. Transfer Petition No. 05 of 2017 was allowed by the Court of learned District Judge, Bhagalpur vide order dated 24.04.2017 and the Title Eviction Case No. 01 of 2009 was transferred to the Court of learned Sub-Judge-V,

Bhagalpur. Learned counsel further submits that since 12.06.2006 i.e. from the date of filing of the written statement, the defendants/petitioners appeared on each and every date before the Court concerned and the matter was never left unattended by the defendants/petitioners. On 27.04.2017 when the case was called for in the Court of learned Sub-Judge-v, Bhagalpur, the counsel for the defendants/petitioners could not reach the Court and could not attend the proceeding due to some unavoidable circumstances and the learned Sub-Judge-V, Bhagalpur closed the evidence of the defendants/petitioners. Learned counsel further submits that there has been no latches on part of the defendants/petitioners and the learned trial court has not appreciated the chronology of events and went on to pass the impugned order without consideration of the facts of the case.

04. Learned counsel appearing on behalf of the respondents vehemently contends that the defendants/petitioners have been deliberately avoiding the recording of their evidence. The plaintiffs/respondents have filed a suit against the defendants and the defendants came up with a false plea by filing a suit for eviction much later to the filing of the Suit by the plaintiffs/respondents. Learned counsel further submits that

there has been no order for analogous hearing of the aforesaid two suits as is apparent from the order dated 24.04.2017 passed in Civil Misc. Petition No. 05 of 2017 by the learned District Judge, Bhagalpur. Learned counsel further submits that the defendants/petitioners are at fault and they should not be allowed to take the advantage of their own wrong.

05. Having regard to the facts and circumstances and rival submissions of the parties, I think the defendants/petitioners could be afforded an opportunity to adduce their evidence since in any suit, mere technicalities should not come in the way of proper disposal of the suit by deciding the real controversy between the parties. Moreover, by the sequence of dates and events, the learned counsel for the defendants/petitioners have been able to make out a case in favour of the defendants/petitioners. There does not appear to be deliberate fault on part of the defendants/petitioners. Hence, I think the impugned orders dated 27.04.2017 and 03.11.2018 could not be sustained and, as such, the same are set aside.

06. The defendants are directed to adduce their evidence before the learned trial court within a time period of two months from the date of first appearance after passing of this order.

07. The learned trial court is directed to take up the matter on urgent basis and try to dispose of the Title Suit No. 22 of 2024 preferably within a period of six months from the date of receipt/production of a copy of this order.

08. Accordingly, the instant Civil Misc. Petition stands allowed.

(Arun Kumar Jha, J)

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