

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1245 of 2017

- 1.1. Bindu Devi wife of Late Sunil Kumar, resident of Flat No. B-501, Maa Mundeshwari Palace, Anishabad, Patna, P.S.-Gardanibagh, District-Patna.
- 1.2. Vishal Kumar, son of Late Sunil Kumar, resident of Flat No. B-501, Maa Mundeshwari Palace, Anishabad, Patna, P.S.-Gardanibagh, District-Patna.
- 1.3. Raushan Kumar, son of Late Sunil Kumar, resident of Flat No. B-501, Maa Mundeshwari Palace, Anishabad, Patna, P.S.-Gardanibagh, District-Patna.
- 1.4. Kajal Kumar, daughter of Late Sunil Kumar, resident of Flat No. B-501, Maa Mundeshwari Palace, Anishabad, Patna, P.S.-Gardanibagh, District-Patna.

... .. Petitioner/s

Versus

1. Pramod Kumar Sharma son of Sri Ram Lakhan Sharma, resident of Village-Raghuni Bigha, P.S.- Belaganj, District- Gaya, presently residing at Saryu Vatika, Near Post Office, Postal Park, P.S.- Jakkanpur, District- Patna.
2. Rajni Kant Ranjan, son of Sri Ram Lakhan Sharma, resident of Village-Raghuni Bigha, P.S.- Belaganj, District- Gaya, presently residing at Saryu Vatika, Near Post Office, Postal Park, P.S.- Jakkanpur, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Vinay Mistry, Advocate
For the Respondent/s	:	Mr. Patanjali Rishi, Advocate
		Mr.Sanjay Kumar Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 07-05-2024

Heard learned counsel for the petitioners as well as
learned counsel for the respondents.

2. The present petition has been filed under Article
227 of the Constitution of India for quashing of the order dated
25.04.2017 passed by learned Sub Judge- XIth, Patna in
Eviction Suit No. 11 of 2010, whereby and whereunder the



petition dated 11.04.2017, filed by the original petitioner/defendant for recall of order dated 28.03.2017 with further prayer to allow the original petitioner/defendant to adduce evidence on the question of title, has been rejected by the learned trial court.

3. Learned counsel for the petitioner submits that Title Eviction Suit No. 11 of 2010 has been filed by the defendants/respondents seeking decree of eviction against the defendant/petitioner from the suit premises. The petitioner appeared on summons and filed his written statement contesting the claim of the respondents. Plaintiffs started examining their witnesses but defendant was not allowed to cross-examine the witnesses of the plaintiffs on the ground that the defence of the defendant was struck off. However, the defendant moved to this Court and got an order in his favour vide order dated 19.02.2016 passed in C.W.J.C. No. 23099 of 2012 by which defendant was allowed to cross-examine the witnesses of the plaintiff. Thereafter, defendant filed a petition before the learned trial court with a prayer to convert the eviction suit to a regular suit as certain facts has come before the learned trial court in the pleading and statement made by the witnesses in cross-examination. As the prayer was not considered by the learned



trial court, the defendant filed another writ application before this Court being C.W.J.C. No. 19938 of 2016 and the matter has been running at the stage of bringing orders of this Court in C.W.J.C. No. 19938 of 2016. However, the suit was mistakenly put up for hearing on 28.03.2017. On that date, the learned court passed order observing that the sufficient opportunity was given to the defendant but the defendant has not produced any order hence, the case was fixed for argument in view of the orders of this Court. Thereafter, the petitioner/defendant filed a petition on 11.04.2017 for recall of the order dated 28.03.2017 which was rejected by order dated 25.04.2017. The learned trial court disposed of the petition with observation that in view of order dated 17.04.2012 defence has already been struck off and further held that there was no merit in the petition filed by the defendant. Learned counsel further submits that the defendant/petitioner was under impression that the suit was at the stage of his evidence and he will be given opportunity to adduce since the order striking of his defence was reversed by this Court in C.W.J.C. No. 23099 of 2012 and the matter has been coming up for producing orders in C.W.J.C. No. 19938 of 2016 and under this impression, the defendant could not produce his witnesses. Learned counsel further submits that the impugned order is



against the ratio of decision of this Court rendered in the case of ***Mahabir Ram Vs. Sheo Shnakar Prasad & Ors.*** reported in ***1968 PLJR 75, para 17*** and the defendant should have been allowed to cross-examine the witnesses of the plaintiffs on the point of title if the defendant disputes the title of the plaintiff or adducing his own evidence on this issue. Same view was adopted by the Division Bench of this Court in the case of ***Dinesh Nandan Sahay Vs. Ram Kripal Singh & Ors.*** reported in ***1966(1) PLJR 234*** and ***Neelkamal's case*** reported in ***2015(4) PLJR 491***. Learned counsel further submits that as the defendant has been questioning the title of the plaintiffs, it was incumbent upon the trial court to allow the defendant to cross-examine the witnesses on the point of title and also allow to adduce his own evidence on the issue of title. Thus, learned counsel submits that the impugned order may be set aside.

4. The contention of the learned counsel for the petitioner has been vehemently opposed by the learned counsel appearing on behalf of the respondents. Learned counsel submits that there is no merit in the present petition as there is no illegality or infirmity in the impugned requiring interference by this Court. The petitioner has been lingering the matter on one pretext or the other and the writ application bearing



C.W.J.C.No. 19938 of 2016 filed by the petitioner was dismissed as withdrawn vide order dated 04.10.2023. Learned counsel further submits that the argument of the defendant on this point that he has been awaiting for outcome of the case is fallacious since after the record was fixed for the evidence of the defendant and defendant was knowing all the time that he has to adduce evidence and despite directions of this Court in C.W.J.C. No. 23099 of 2012, the defendant failed to avail the order and learned trial court was duty bound to proceed with the trial and conclude the same within six months as per the direction of this Court in C.W.J.C. No. 23099 of 2012. Even otherwise dismissal of C.W.J.C. No. 19938 of 2017 has no bearing in the matter before the learned trial court. Learned counsel further submits that it is incorrect to say that the order was passed by this Court to set aside the order of striking off the defence of the petitioner rather petitioner was only permitted to cross-examine the witnesses of the plaintiffs. Learned counsel further submits that the authorities cited by the learned counsel for the petitioner has no application in the facts and circumstances of the present case as the relationship between the petitioner and respondents is of tenant and landlord and there is no dispute over title of the plaintiff. The claim of the defendant/petitioner is based on some



agreement to sale and a suit for specific performance of contract was filed which does not give him any title over the suit premises. The argument made in this case is completely fallacious. Thus, learned counsel for the respondents submits that there is no merit in the present petition and the same may be dismissed.

5. I have given my thoughtful consideration to the rival submissions and different aspects of the matter. The eviction suit has been filed before the learned trial court in the year 2010. On 17.04.2012 the defence of the defendant has been struck off. Thereafter, the case has a chequered history and time and again the defendant approached this Court. However, the defendant did not take any step pursuant to directions of this Court passed in C.W.J.C. 23099 of 2012 from which it amply clear that the learned Single Judge has observed that the defendant was required to cross-examine the witnesses of the plaintiffs while setting aside the order dated 10.10.2012 and the order dated 17.04.2012 was never set aside. So the position remains the same that the defence of the defendant was struck off and order dated 17.04.2012 attained finality for want of any challenge. Moreover, the learned trial court was directed to proceed in the matter and conclude the trial within six months



keeping in view the fact that the nature of the suit being an eviction suit as well as period of its pendency.

6. In these circumstances, I do not find any infirmity in the order dated 28.03.2017 and 25.04.2017 and the same are affirmed. Accordingly, the present petition stands dismissed.

7. At this stage, learned counsel for the respondents submits that the court where the matter is pending is lying vacant. So, the learned District Judge is requested to transfer the matter in some running court which would make all endeavour to dispose of the matter within next three months from the date of receipt/production of a copy of this order.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.05.2024
Transmission Date	NA

