

(2003) 12 PAT CK 0035
In the Patna High Court
Case No : C.R. No. 893 of 2002

Birmani Pandey @ Birmani Saranacharya	APPELLANT
Vs	
Sri. Sri. 1008 Swami Dharanidharacharya and Others	RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Citation : (2003) 12 PAT CK 0035

Final Decision : Allowed

Judgement

Nagendra Rai, J.—Heard learned Counsel for the parties.

2. The Plaintiff in Eviction Suit Nos. 71. 72 and 73 of 1993 is aggrieved by the order dated 9.5.2002. whereby the District Judge, Patna has transferred the aforesaid eviction suits as well as Title Suit No. 49 of 1989 from the Court of Execution Munsif, Patna to the Court of Subordinate Judge XII, Patna for disposal where Title Suit No. 179 of 2000 is pending. He has further directed the Subordinate Judge to hear the parties on the point of analogous trial of the aforesaid suits and to proceed in accordance with law.

3. Eviction suits have been filed by the Petitioner for eviction of tenants, who are not party in the title suit. Title suit has been filed claiming title where the Petitioner is a party.

4. The only question for consideration is as to whether eviction suits and title suits should be heard together.

5. It is now well settled that in a suit for eviction question of title cannot be gone into and when complicated question of title arises in eviction suit, the Court cannot proceed with the eviction suit and the question of title has to be gone into first. In this connection, reference may be made to the judgment of the Apex Court in the case of Rajendra Tiwary Vs. Basudeo Prasad and Another,

6. Learned Counsel appearing for the Petitioner drew my attention to the judgment of the Apex Court passed in SLP 20695 of 2000 disposed of on 13th

July, 2001, wherein prayer was made to stay eviction suit till the disposal of title suit. It was held by their Lordships that Bihar Rent Act is a Special Act providing for speedy disposal of the eviction suit on certain grounds enumerated therein. To succeed in eviction suit under Bihar Rent Act, the landlord is required to prove tenancy between the landlord and tenant and also the grounds on which eviction is sought. In such a suit Rent Court is not required to go into serious question of title otherwise the purpose of the Act would stand frustrated and accordingly held that the eviction suit cannot be stayed till the disposal of the title suit.

7. Learned Counsel appearing for the opposite parties, on the other hand, produced two orders passed by the Apex Court in Civil Appeal arising out of SLP No. 13920 of 1997 dated 27th January, 1998 and Civil Appeal No. 1042 of 2000 dated 14th February, 2000 as well as judgment of the Apex Court in the case of Nagappa v. Dodda Bharamapp AIR 2000 S.C. 3567 (1), wherein the Apex Court passed order for analogous trial of the rent suit as well as civil suit.

8. From perusal of the aforesaid orders it appears that these orders were passed by the Apex Court after taking into consideration special facts of the case. The said decisions have not laid down that in all cases where title suit and eviction suit are pending, the same should be made analogous. In the instant case, eviction suits have been filed on one of the grounds enumerated under the provisions of Bihar Buildings (Lease, Rent and Eviction) Control Act and the Plaintiff has to prove relationship of landlord and tenant and in case of failure to do so, the suit will fail. In my view, title suit cannot be tried analogous with eviction suits as that will unnecessarily delay the disposal of eviction suits, which are to be tried expeditiously under special Act.

9. Accordingly, the impugned order directing for analogous trial of title suit and eviction suit is set aside. However, in view of the fact that prayer was made for transfer of the case from the Court of Execution Munsif where the suits were pending to any other Courts, let Eviction Suit Nos. 71, 72 and 73 of 1993 be transferred to the Court of Munsif I, Patna for disposal.

10. In the result, this revision application is allowed.