
(2001) 07 JH CK 0031
In the Jharkhand High Court
Case No : Civil Revision No. 310 of 1998 (R)

Geeta Sen @ Geeta Rani Sen

APPELLANT

Vs

Laxman Pandey and Another

RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2001) 07 JH CK 0031

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : K.K. Laik, for the Appellant; R.S. Mazumdar, for the Respondent

Final Decision : Allowed

Judgement

Gurusharan Sharma, J.—Plaintiff-opposite party No. 1 filed title suit No. 22 of 1992, against defendant-petitioner for specific performance of unregistered agreement for sale.

2. Petitioner had filed title (Eviction) Suit No. 110 of 1974 against opposite party No. 2, who is performa defendant in title suit No. 22 of 1992. Eviction suit was decreed and the said decree was confirmed by this Court,

3. Petitioner thereafter filed execution case No. 12 of 1980 to execute the said eviction decree, which is pending.

4. Opposite party No. 1 in title suit No. 22 of 1992 claimed that pursuant to the aforesaid eviction decree, performa defendant, Shankar Agrawal, handed over vacant possession of the suit premises to her and thereafter she executed a Sada agreement for sale in his favour and put him in possession of the suit premises.

5. Petitioner emphatically denied entire claim of the opposite party No. 1 including execution of any such agreement for sale.

6. A petition for interim injunction was filed in the said suit to restrain petitioner from evicting the opposite party No. 1 from the suit premises till disposal of the

suit, which was allowed by order dated 3.9.1992.

7. Petitioner filed Miscellaneous Appeal No. 77 of 1992 against the said interim order of injunction, which was heard and dismissed by impugned order dated 30.5.1998, holding that the appeal was not maintainable as the trial Court granted interim injunction in its inherent power u/s 151 of the Code of Civil Procedure.

8. Learned Additional District Judge was of the view that against order dated 3.9.1992, present petitioner had remedy only to go in revision.

9. In my view, since petitioner had already obtained eviction decree against opposite party No. 2 and execution proceeding was still pending, at this stage without obtaining a decree for specific performance of the alleged agreement for sale in his favour, the opposite party No. 1 in the present suit was not entitled for any interim injunction against the petitioner.

10. An agreement for sale does not create any right, title and interest in the property in question and so called report of a Pleader Commissioner at this stage to the effect that opposite party No. 1 was living in the suit premises with his family members was not sufficient and could not have been relied upon as evidence of his physical possession and as such any interim order against the petitioner ought not to have been passed.

11. I, therefore, allow this revision application and set aside order dated 30.5.1998 passed in M.A. No. 77 of 1992 as well as the interim order of injunction dated 3.9.1992, passed in title suit No. 22 of 1992. However, there shall be no order as to costs.

12. Revision application allotted.