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Court : Patna

Decided On : Aug-12-1997

Judge : P.K. Deb, J.

Appeal No. : Civil Revision No. 52 of 1997 (R)

Appellant : Birendra Prasad and ors.

Respondent : Nagendra Narayan Singh Deo and ors.

Judgement :

P.K. Deb, J.

1. This Revision Petition has been filed against the long order dated 12.12.1996 passed by the 3rd Addl. District and Sessions Judge, Chaibasa in Title Appeal No. 26 of 1996 refusing to act on the petition filed under Order XLL Rule 5, C.P.C. r/w Section 151 of the C.P.C. for stay of the order of injunction passed and decreed in Title Suit No. 3 of 1988 which has been challenged in Title Appeal No. 26 of 1996.

2. Regarding the maintainability of the petition under Order XLI, Rule 5 C.P.C. Mr. N.K, Prasad, appearing on behalf of the petitioner has fairly submitted that the Order XLI, Rule 5, CP.C. would not be applicable in the present circumstances of the case.

3. The respondents had filed the above mentioned Title Suit No. 3 of 1988 for declaration of his title, confirmation of possession and also for permanent injunction in his favour and in favour of defendant Nos. 20 to 28. The suit was contested and according to the defendant-appellants, they are and were in possession of the suit land and they had exclusive possession as they have raised paddy thereon. However, the suit was decreed including the order of permanent injunction. Against that judgment and decree. Title Appeal No. 26 of 1996 was preferred as mentioned above for stay of the order of injunction passed in the suit, which has been appealed.

4. According to Mr. N.K. Prasad, when Order XLI, Rule 5, CP.C is not applicable as there is no executable decree on the face of it then Section 151, CP.C. must apply as the decree which has been granted, even though the same is in dilute stage because of the pendency of the appeal, but the same has got mischievous civil consequence, to the effect that the petitioner-appellants may be held liable for violation of injunction as contemplated under Order XXXIX of the CP.C and to avoid such mischief and Civil consequence, such stay order is necessary, when the appeal is nothing but a continuation of the suit and the impugned decree has been challenged in the appeal itself.

5. Mr. L.N. Deo, appearing on behalf of the Opposite-Parties submits that the learned court below has not committed any error of law as there was no scope of grant of any stay under Order XLI, Rule 5, CP.C According to him, at best there can be a prayer under Order XXXIX, Rule 1 and 2, CP.C. injunctioning the Opposite-parties not to proceed with the order of injunction any further,

6. Such sort of injunction might not be plausible one in the circumstances of the present case. Uptil now, as is found from the records and on the submissions of the learned Counsel of both the parties, there is no step against the appellants for violation of injunction, but according to the petitioners, they have got every apprehension, as according to them, they are in physical possession of the suit land and unless a stay order is there, they would not be in a position to go into the land.

7. On the other hand, Mr. Deo's submissions is that when there is already a decree granting permanent injunction against the petitioners, such sort of stay in unwarranted.

8. In support of the submission, Mr. N.K. Prasad has referred to a decision of the Apex Court as reported in 1980 SCC (3) page-484.

9. It has been observed by the Apex Court, when an order appealed against has got mischievous civil consequences then stay order must be passed by the appellate court,

10. In view of the principles as laid down and enunciated by the Apex Court, I feel that it is a fit case where Section 151, C.P-C. ought to have been applied by the learned court below granting stay regarding the order of injunction included in the decree appealed against. Hence, this revision petition is hereby allowed. The impugned order is hereby set aside and the execution of the order of injunction in the decree of Title Suit No. 3 of 1988 shall be stayed till disposal of Title Appeal No. 26 of 1996.

11. The learned Appellate Court is hereby directed to disposed of the appeal as expeditiously as possible and preferably within three months next positively.

12. Stay order passed earlier regarding proceeding of the suit is hereby withdrawn.

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