

Arun Dutt Vs. Upendra Kumar Singh and ors.

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Court : Patna

Decided On : Nov-12-1993

Judge : B.K. Roy, J.

Appeal No. : Civil Revision No. 1191 of 1993

Appellant : Arun Dutt

Respondent : Upendra Kumar Singh and ors.

Disposition : Application Dismissed

Judgement :

B.K. Roy, J.

1. The sole defendant of a suit filed by the plaintiff Opposite Parties No. 1 to 6 for specific performance of contract, assails validity of an order dated the 10th June, 1993, of Shri B. P. Kashyap, Subordinate, Judge-1, Gaya, In Title Suit No. 160 of 1992, rejecting his prayer to stay further proceedings of the suit till completion of the investigation by the Deputy Commissioner of Police, Detective Department (Fraud Section) Lal Bazar, Calcutta, in regard to his allegation of fraud on him and the forgery of the deed of Baibeyana (agreement of sale) dated 15-1-1991, on which the suit was filed, on his complaint before the Sub-Divisional Judicial Magistrate at Alipore, 24 Parganas (South), West Bengal.

2. The Court below has rejected the prayer holding that the Code of Civil Procedure (hereinafter referred to as 'the Code' does not provide any provision to stay proceedings in a Civil Suit, if a criminal proceeding is pending outside the State and that the pendency of a criminal case is no bar to the continuance of further proceedings of the suit.

3. Mr. Rain Janam OJha, learned Counsel appearing on behalf of the petitioner, strenuously urged relying upon several decisions--one Full Bench decision of our own Court, one decision of the Calcutta High Court and two decisions of the Apex Court, that the Court below has committed a jurisdictional error in refusing to exercise jurisdiction vested in it by virtue of Section 151 of the Code inasmuch as the complaint instituted by the petitioner and Ms defence taken in the suit are grounded on same facts; and that Section 151 of the Code begins where Section 10 of the Code ends and, accordingly. the impugned is liable to be set aside.

4. Mr. Ashwini Kumar Singh, learned Counsel appearing for the Opposite Party, prayed for exemplary cost submitting that the application of the petitioner was ill-advised and misconceived, who also obtained a Rule and order of stay from this Court and illegally dragged them to this Court.

5. In ray view, the submissions of Mr. Ojha are misconceived and deviod of any substance. He fails to cite any decision of any court, in which such a prayer has been allowed. There are some decisions of this Court, and of other Courts, in relation to suits only interpreting Section 10 of the Code and applicability of Section 151 of the Code when Section 10 of the Code in terms does not apply. I fail to appreciate as to why proceedings in a Civil Suit, in which the validity or otherwise of a deed is involved, should be stayed by the Civil Court, which has jurisdiction to adjud e during the pendency of an investigation by a Police authority on a complaint filed during the pendency of the suit. According to the provisions of the Evidence Act, even judgments of Criminal Courts are admissible only to a limited extent.

6. From the Revision Petition and its Annexure, it transpires that the petitioner is an ill-health old man aged 80 years and had filed the petition invoking Section 151 of the Code in the ends of justice and action was also taken on his complaint.

7. For the reasons aforementioned, this Civil Revision application is dismissed but taking in account the facts stated as above make no order as to cost.

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