

Patna High Court - Orders

Taj Bano vs Dayanat Hussain on 18 August, 2011

IN THE HIGH COURT OF JUDICATURE AT PATNA

SA No.265 of 2007

Taj Bano, Wife of Late Zahiruddin Khan, D/o Late Khalafat Hussain,  
R/o Mundichak, P.S.-Kotwali, District-Bhagalpur at present residing at  
Amjad Ali Lane, Barehpura, P.O.-Bhagalpur, P.S.-Kotwali now  
Ishakchak, District-Bhagalpur.--Defendant-Respondent-Appellant.

Versus

Dayanat Hussain, Son of Late D/o Late Khalafat Hussain, R/o Amjad  
Ali Lane, Barehpura, P.O.-Bhagalpur, P.S.-Kotwali now Ishakchak,  
District-Bhagalpur-----Plaintiff-Appellant-Respondent  
-----

15. 18.08.2011 I.A.No.2703 of 2011.

This Interlocutory application has been filed by the appellant praying for stay of further proceeding in Title Execution Case No. 01 of 2009 pending before Sub Judge VII, Bhagalpur during the pendency of this appeal.

The Defendant is the appellant in this appeal and has filed Title Suit No. 106 of 1999 for declaration of title and recovery of possession with respect to the suit premises detailed in Schedule I of the plaint. The suit was dismissed on merits. However the appellate court has reversed the judgment and decree and allowed the appeal with a direction to the defendant to vacate the suit premises and hand over vacant possession to the plaintiff. The Execution Case No. 01 of 2009 has been filed by the plaintiff seeking delivery of possession by dispossessing the defendant appellant from the suit premises through the process of the Court. In the Interlocutory application, the appellant has stated that she is residing and occupying the premises as residential house and dispossession will cause irreparable loss and injury to her during the pendency of this appeal. From the statement and affidavit made in the Interlocutory application, it appears that the appellant is a 70 years old lady. By filing counter affidavit the sole respondent, contesting the claim of the appellant, has asserted that the appellant is not residing in the suit premises rather she has inducted Md. Kamal as tenant at the monthly rent of Rs. 500/- and as such she has no right to resist the delivery of possession. The appellant has filed a reply to the said counter affidavit and has stated that the Md. Kamal and his wife are living in the suit premises at her instance for the purpose to look after the appellant due to her old age and they have never been inducted as tenant by the appellant. An affidavit sworn by Md.Kamal has also been annexed with the reply in support of this averment.

After considering the submissions, facts and circumstances of this case, it is clear that this appeal has been admitted for hearing by order dated 22.11.2010. There is no dispute that the suit premises is a residential house and the plaintiff has sought recovery of possession by dispossessing the appellant(defendant) who is a seventy years old lady claiming to reside therein. As a result this application is allowed and the further proceeding of Execution Case No. 01 of 2009 of the Court of Sub Judge VII, Bhagalpur is stayed during the pendency of this appeal.

Nitesh

(V.Nath, J.)