

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10518 of 2014

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1. Krishna Devi Wife of Late Bhagawan Prasad Agrahari
2. Ajay Kumar Agrahari Son of Late Bhagwan Prasad Agrahari
3. Anup Prasad Agrahari son of Late Bhagwan Prasad Agrahari
4. Sanjay Prasad Agrahari Son of late Bhagawan Prasad Agrahari
5. Ashok Prasad Agrahari son of Late Bhagwan Prasad Agrahari All are residence of at Jhajha, P.S- Jhajha, District- Jamui.

.... **Petitioners.**

Versus

1. Satyanarain Prasad Tendassi Son of late Bhagwan Das Tendassi.
2. Shambhu Nath Prasad Tendassi Son of Late Bhagwan Das Tendassi
3. Manorma Devi Wife of Lalit Narain Poddar
4. Chimpu Kumar son of Lalit Narain Poddar
5. Rabindra Kumar Poddar Son of late Lalit Narain Poddar
6. Sweta Devi D/o Late Lalit Narain Poddar.
7. Dimple D/o Late Lalit Narain Poddar.

.... **Respondents.**

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Sinha, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

3 29-06-2015 Heard Mr. Rajesh Kumar Sinha, the learned counsel appearing for the petitioners and Mr. Ashok Kumar Keshari, the learned counsel for the respondents.

Calling in question the legal acceptability of the order dated 16.04.2014 passed by the learned court below in Execution Case No. 01/2012 staying the further proceeding of the execution case till the production of the succession certificate by the petitioners, the present writ application has been filed by the petitioners.



The necessitous facts, for appreciation of the rival submissions on behalf of the parties, are that the Eviction Suit No. 03/2003 was filed against the defendant-respondents by Bhagwan Prasad Agrahari who was the husband of the petitioner no.1 and father of the petitioner nos.2 to 5. The eviction suit was decreed by the judgment and decree dated 04.11.2011 after deciding the issues of personal necessity and default against the defendant-respondents and directing them to vacate the suit premises within three months.

The Eviction Appeal No.01/2011 and the Eviction Appeal No.02/2011 have been preferred by the defendant-respondents before the appellate court. The original plaintiff Bhagwan Prasad Agrahari died during the pendency of the appeals and the petitioners as his heirs and legal representatives have been substituted in those appeals in his place as respondents.

As the defendant-respondents failed to deliver the vacant possession of the suit premises in compliance of the eviction decree, the petitioners filed Execution Case No.01/2012 for execution of the eviction decree.

The respondents filed petitions in both the appeals for stay of further proceeding of the Execution Case No.01/2012 challenging the maintainability of the execution case by the

petitioners. However, by order dated 17.06.2013 (Annexure-4) the appellate court declined to adjudicate the issue of maintainability of the execution case as raised and rejected the petitions filed by the respondents refusing to grant the stay as prayed.

The defendant-respondents thereafter filed petition on 14.02.2014 (Annexure-5) in the execution case praying for dismissal of the same. It has been the case of the respondents that in view of the provisions of Section 214 of Indian Succession Act, the execution case is not maintainable in absence of the production of the succession certificate in their favour by the petitioners showing them to be the successor of the deceased decree holder. It has also been pointed out in the petition that in view of the observations by the appellate court while disposing of the said petition that all questions relating to execution, discharge and satisfaction of the decree arising between the parties or their representatives shall be determined by the executing court, this objection on the basis of the provision of Section 214 of the Indian Succession Act has been raised.

The decree holder-petitioners filed the rejoinder contesting, inter alia, the applicability of the provision of Section 214 of the Indian Succession Act in the facts and circumstances

of the case and asserted their right to maintain the execution case as admitted heirs of the deceased sole decree holder.

After hearing the parties, the learned executing court below has come to the conclusion that in view of the provision of Section 214(1) (b) of the Indian Succession Act it is mandatory for the petitioners claiming themselves to be the heirs of the deceased decree holder to produce the succession certificate before getting the decree executed. Accordingly, by the impugned order the further proceeding of the execution case has been stayed till the production of succession certificate by the petitioners.

The learned counsel for the petitioners has emphatically submitted that the provision of Section 214(1)(b) of the Indian Succession Act is not attracted at all in the facts and circumstances of the case as the petitioners are admittedly the heirs and legal representatives of the deceased decree holder Bhagwan Prasad Agrahari and are legally entitled to maintain the execution case and get the decree executed. It has been canvassed by the learned counsel that the executing court below has committed serious error of jurisdiction in accepting the objection raised by the judgment debtor-respondents to the maintainability of the execution proceeding in absence of a succession certificate under the provisions of Indian Succession Act.



Mr. Keshari, the learned counsel for the respondents, at the outset, has raised objection to the maintainability of the present writ application. It has been submitted that in view of the law laid down by the apex court in the case of **Surya Dev Rai V. Ram Chander Rai, (2003)6 SCC 675** , a limited window has been provided for exercise of the jurisdiction under Article 226 and 227 of the Constitution of India in such matters. Elaborating his submissions , the learned counsel has propounded that the petitioners have the remedy against the impugned order in Eviction Appeal No.01/2011 and Eviction Appeal No. 02/2011 which are pending against the eviction decree sought to be executed, where they can assail its legality and propriety. It has also been urged that after the contest and obstruction/resistance by the judgment debtor-respondents to the execution of the decree for possession over the suit premises, the decree holder-petitioners have the alternative remedy to file petition under Order 21 Rule 97 C.P.C. and even otherwise also in view of the provisions of Section 47(1)(3)C.P.C., the executing court has acted within jurisdiction to entertain the objection and pass the impugned order. The learned counsel for the respondents has further also argued that in view of the mandatory provision of Section 214(1)(b) of the Indian Succession Act, the succession

certificate is sine qua non for maintaining the execution proceeding by the petitioners. It has also been submitted that the impugned order is only interlocutory in nature, and therefore, also the interference in such order by this Court would open a flood gate burdening this Court with such writ applications.

After consideration of the facts and submissions raised on behalf of the parties, it is limpid that the eviction decree has been passed against the respondents in the suit for eviction filed by the plaintiff Bhagwan Prasad Agrahari. It is not in dispute that the decree holder Bhagwan Prasad Agrahari died after passing of the decree. It has also not been disputed on behalf of the respondents that the two appeals have been preferred by them against the eviction decree and the present petitioners have been substituted in those two appeals as heirs and legal representatives of decree holder- Bhagwan Prasad Agrahari after his death. Before this Court also the learned counsel for the respondents has not raised any objection to the status of the present petitioners as heirs and legal representatives of the deceased decree holder Bhagwan Prasad Agrahari.

However, the objection of the respondents to the maintainability of the execution case at the instance of the present petitioners is evidently on the basis of the provision as contained

Administrator-General's Act, 1913 (3 of 1913), and having the debt mentioned therein, or*

(iii) a succession certificate granted under Part X and having the debt specified therein, or

(iv) a certificate granted under the Succession Certificate Act, 1889 (7 of 1889), or

(v) a certificate granted under Bombay Regulation No.VIII of 1827, and, if granted after the first day of May, 1889, having the debt specified therein.

The provision aforesaid unmistakably underscores the necessity for obtaining a succession certificate only when the decree is for recovery of debts from debtors of deceased persons and the execution of such decree has been levied by a person claiming representative title. The facts are entirely different in the present case when admittedly the decree under execution is not for recovery of debts from debtors of a deceased person rather the said decree is for eviction and arrears of rent under the

provisions of B.B.C. Act and the petitioners who have filed the execution case are admittedly the heirs and legal representatives of the deceased decree holder. In this backdrop of facts, the direction by the executing court not to proceed with the execution case till the production of succession certificate by the petitioners is not legally sustainable. The executing court below has clearly misconceived the provision of Section 214(1)(b) of the Indian Succession Act and has committed gross error of jurisdiction in passing the impugned order on the basis of said provision resulting in failure of justice.

The submission on behalf of the (judgment debtor) respondents is also that in view of the decision of the apex court in **Surya Dev Rai (Supra)**, the jurisdiction of this Court under Article 226 and 227 of the Constitution of India in such matters stands restricted. This Court, however, is unable to align with this submission in view of the dictum laid down by the apex court in the said decision itself which is as follows:-

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*We sum up our conclusions in a nutshell, even
at the risk of repetition and state the same as
hereunder:-*

(1) Amendment by Act 46 of 1999 with effect from 01.07.2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court , against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction-by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural

justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High court may step in to exercise its supervisory jurisdiction.

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(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or



grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of begin corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as , if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of lis.

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(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may now only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

As noticed above, the learned court below has clearly



committed illegality in accepting the objection of the judgment debtor-respondents against the maintainability of the execution case in absence of a succession certificate in view of the provision of Section 214(1)(b) of the Indian Succession Act. The submission on behalf of the respondents that the petitioners have the remedy against the impugned order in the pending appeals against the eviction decree filed by the respondents, is also devoid of merit. The jurisdiction of the appellate court in the said appeals is confined to the adjudication of the legality and validity of the eviction decree under appeals and the petitioners cannot seek legal remedy against the impugned order in those appeals filed by the respondents. Similarly the submission that the petitioners, in view of the objection/resistance by the judgment debtor-respondents to the execution of the decree has the remedy under Order 21 Rule 97 C.P.C. is manifestly misconceived in the facts and circumstances of the case as the respondents are admittedly judgment debtor.

For the aforesaid premised reasons and discussions, this Court overrules the objections on behalf of the respondents to the maintainability of this writ application and further holds that the impugned order is not legally sustainable.

The writ application is, accordingly, allowed and

the impugned order is quashed with the direction to the learned court below to proceed with the execution case in accordance with law.

(V. Nath, J)

Nitesh/-

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