

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.57 of 2015

=====

Dinesh Singh son of late Jamadar Singh resident of Mohall-Khairat Ahmad
Road, Murarpur, P.S. Kotwali, District-Gaya. Petitioner/s

Versus

Satyadeo Prasad son of late Bindeshwary Prasad, resident of Mohalla-
Chauk Road, P.S. Kotwali, P.O.- Head Post Office, Gaya, District-Gaya.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ravinder Kumar Sharma

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

3 07-07-2015 The learned counsel for the petitioner has pointed out that there was already a direction on 06.07.2015 for notifying this matter for admission even with defects but the same was not done. The learned counsel further submitted that all the defects would be removed just now and made the prayer for notifying the matter for admission today itself in view of the fact that the delivery of possession was going to be effected today itself. As such, this revision application has been notified for admission after permitting the removal of defects as prayed.

Heard Mrs. Veena Rani Prasad, the learned counsel for the petitioner in admission matter. It has been stated by the learned counsel for the petitioner that all the defects have been removed.

It would be pertinent to take into notice that this revision application has been filed on 06.07.2015 itself assailing the order dated 20.06.2015 passed in the execution case. It is

further pertinent to take into notice that the execution proceeding has been initiated for execution of the eviction decree against the petitioner.

In order to appreciate the submissions on behalf of the petitioner, it would be necessary to notice the backdrop of facts of the case which has become apparent from the records as well as the submissions on behalf of the petitioner. The title suit no. 258 of 1977 was filed under the Bihar Buildings (Lease, Rent and Eviction) Control Act (in short 'the BBC Act') praying for a decree of eviction against the predecessor of the present petitioner as defendant on the ground of default in payment of rent. The said suit was admittedly filed by one Brij Bihari Singh and the defendant was Jamadar Singh who was father of the present petitioner. The said suit was decreed ex parte on 18.09.1976. Thereafter, according to the petitioner, T.S. No. 391 of 1977 was filed for setting aside the ex parte decree which was allowed on 28.02.1979. Thereafter, it is further case of the petitioner that T.S. No. 02 of 1982 was again filed by Brij Bihari Singh on the same ground seeking the decree for eviction against the father of the petitioner. This suit was decreed by judgment and decree dated 19.04.1982. The father of the petitioner thereafter filed title appeal no. 34 of 1982 against the said decree and this title appeal was



allowed on 14.12.1983. Brij Bihari Singh thereafter preferred Second Appeal No. 113 of 1984 which was dismissed on 14.03.1985. The S.L.P. (Civil) Appeal No. 5184 of 1985 was filed by Brij Bihari Singh and the Apex Court by order dated 08.04.1993 remanded the matter back to this Court for fresh hearing. According to the submission on behalf of the petitioner, the Second Appeal No. 113 of 1984 was allowed and the matter was remanded back to the appellate court below to hear and dispose of the title appeal afresh. It has also been stated on behalf of the petitioner that the said title appeal no. 34 of 1982, after remand was dismissed by judgment and order dated 18.11.2003. The petitioner thereafter filed second appeal no. 16 of 2004 which also came to be dismissed. The learned counsel for the petitioner has further submitted that a review application has been filed praying for review of the judgment and decree passed in second appeal no. 16 of 2004 which is pending. In the meantime, the execution proceeding for execution of the eviction decree has continued and the executing court has passed the order on 20.06.2015 directing for delivery of possession over the suit premises.

By filing this revision application on 06.07.2015, the petitioner has assailed the order dated 20.06.2015 on the ground



that the executing court has committed error of jurisdiction and illegality in passing this order after rejecting the petition dated 24.12.2012 filed by the petitioner raising the objection with regard to the status of the opposite party Satyadeo Prasad who has filed the execution case as legal representative of the original decree holder Brij Bihari Singh. It would be necessary to point out here that according to the submission on behalf of the petitioner, original decree holder Brij Bihari Singh died in the year 1988.

The learned counsel for the petitioner has submitted that the learned executing court below ought to have passed a reasoned order and ought not to have dismissed the petition dated 24.12.2012 filed on behalf of the petitioner in a mechanical manner. It has been propounded by the learned counsel for the petitioner that the provision of Section 47 C.P.C. enjoins the executing court to decide the issue relating to the execution, discharge and satisfaction of the decree under execution and its sub Section 3 further also provides for determination of the question pertaining to the status of any person as legal representative of a party as and when that question arises. It has been argued that by filing the petition on 24.12.2012 (Annexure-3), the said question of status of the opposite party Satyadeo Prasad as legal representative of the original decree holder Brij Bihari Singh



has been squarely raised by the petitioner and such question was required to be determined by the executing court in full fledged manner. It has, therefore, been submitted by the learned counsel for the petitioner that the learned court below has failed to exercise the jurisdiction vested therein as it has given no cogent reason for rejecting the petition filed by the judgment-debtor petitioner on 24.12.2012 and has wrongly fixed the date on 07.07.2015 for effecting delivery of possession over the suit house against the petitioner. The urgency of the matter has also been emphasized on the ground that the dispossession of the petitioner from the suit house would cause irreparable loss and injury to the petitioner.

After careful consideration of the submissions and the facts of the case as above noticed, it is manifest that a decree for eviction has been passed against the petitioner in the suit filed under BBC Act on the ground of default in payment of rent. It has not been disputed that after remand by the Apex Court and thereafter by this Court, the appeal in the first appellate court has been heard afresh and the appellate court below has affirmed the decree of eviction passed against the petitioner. In paragraph 8 and 9 of the revision application, the petitioner has stated that the original decree holder died in the year 1988 during the pendency of the matter before the Apex Court which had passed the remand



order on 08.04.1993. The petitioner has however omitted to make further statement in the revision application regarding the decree/order passed by the courts after the remand by the Apex Court. The omission appears to have been willfully made in order to suppress the fact regarding substitution after the death of the original decree holder in the pending proceedings. During the course of submission, it has however been accepted that the present opposite party Satyadeo Prasad was substituted in the pending proceeding in place of the plaintiff Brij Bihari Singh. The Title appeal No. 34 of 1982 filed in the appellate court below by the father of the petitioner (since deceased and substituted by the petitioner), after remand, was decided afresh on 18.11.2003 affirming the decree of eviction against the petitioner. This appellate decree was assailed by the petitioner before this Court in S.A. No. 16 of 2004. This second appeal was also dismissed and it has been submitted that a review application is pending. In these two appeals and the review application, filed by the petitioner, the opposite party Satyadeo Prasad was impleaded as respondent and had also contested the appeals defending the eviction decree passed at the instance of the original plaintiff Brij Bihari Singh. On behalf of the petitioner, it could not be established that at any point of time when the aforesaid title appeal and second appeal



were being heard, objection was raised on behalf of the petitioner challenging the status of the Satyadeo Prasad as legal representative of the original decree holder Brij Bihari Singh rather it is more than that apparent that the petitioner himself had sought the reversal of the original eviction decree passed at the instance of the Brij Bihari Singh by impleading Satyadeo Prasad as his legal representative. In the pending review application also as submitted by the learned counsel for the petitioner, Satyadeo Prasad has been impleaded as opposite party. These facts leave no scope for considering the issue, at the instance of the petitioner, questioning the status of opposite party Satyadeo Prasad as legal representative of the deceased decree holder.

The principle of law in this regard has been well laid by a Bench of this Court in the case of **State of Bihar Vs. B. L. Agarwalla, A.I.R. 1966 Pat. 410**. It has been ruled that “a litigant cannot be permitted to assume inconsistent positions in court to the detriment of his opponent and if a party takes up a particular position at one stage of litigation it cannot turn around and resile from that position”. The learned court below has passed the impugned order observing that such objection was never raised earlier by the petitioner. The learned counsel for the petitioner has put emphasis that the learned

court below ought to have assigned cogent reason before dismissing the petition dated 24.12.2012 but has failed to explain as to why the opposite party Satyadeo Prasad who is perusing the execution case as decree holder was impleaded as respondent in the title appeal, second appeal as well as in the review application by the petitioner himself. The bar created by estoppel undoubtedly stares at the face of the petitioner and the attempt to prolong and dilate the proceeding of execution is more than apparent in these facts and circumstances. In the opinion of this Court, there is no error of jurisdiction committed by the learned court below in rejecting the petition dated 24.12.2012 which was frivolous and purposely filed only to delay the execution proceeding.

This revision application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

U			
---	--	--	--