

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.71 of 2013

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1. Rehan Ahmad S/O Late Jainuddin Ahmad Resident Of Village- Sheikh Mohalla Siwan, P.O- Siwan, Police Station- Siwan Town, District- Siwan.
 2. Nezam Ahmad S/O Late Jainuddin Ahmad Resident Of Village- Sheikh Mohalla Siwan, P.O- Siwan, Police Station- Siwan Town, District- Siwan.

.... **Petitioners.**

Versus

1. Satyapal Prasad S/O Late Bharat Prasad Resident Of East Of Bari Maszid, Siwan, P.O- Siwan, Police Station- Siwan, Town, District- Siwan.
2. Badani Devi W/O Late Satyadeo Prasad, Resident Of Village Kasera Toli, Siwan, P.O- Siwan, Police Station- Siwan Town, District- Siwan
3. Himanshu Shekhar Shaha S/O Late Satyadeo Prasad Resident Of Village Kasera Toli, Siwan, P.O- Siwan, Police Station- Siwan Town, District- Siwan
4. Sultan Ahmad S/O Late Haji Md. Ali Shah Resident Of Saray Siwan, P.O- Siwan, Police Station- Siwan Town, District- Siwan.

.... **Opposite Parties.**

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Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr.Adv.
Mr.Umesh Kumar Mishra, Adv.

For the Respondent/s : Mr. Ranjeet Kumar, Adv.
Mr.Kundan Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

21 02-11-2015

Heard the learned counsel for the petitioners

and the learned counsel for the plaintiff-opposite party.

No body has appeared for the other opposite parties.

The present revision application has been filed by the petitioners assailing the impugned order passed by the court below, rejecting the petition filed by the petitioners under Section 47 of the C.P.C. praying for dismissal of the execution case.

There is no dispute as to facts that an eviction



suit was filed by the original plaintiff Bharat Prasad against the defendant-petitioners (substituted after the death of original defendant). The suit was decreed and thereafter the execution case has been filed by the plaintiffs who are the heirs of original plaintiff. It would be relevant to mention here that the original plaintiff Bharat Prasad died during the pendency of the suit leaving behind his widow Kamla Devi and two sons Satyadeo Prasad and Satyapal Prasad who were substituted as plaintiffs in the suit.

During the pendency of the execution case a petition under Section 47 C.P.C. was filed by the judgment debtor-defendant-tenant stating therein that after the death of one of the plaintiffs namely Satyadeo Prasad, his widow Most Badami Devi has sold the suit premises allotted to her husband in private partition with his brother Satypal Prasad to the judgment debtor by sale deed dated 26.03.2010. The prayer, was, therefore, made for dismissal of the execution case as the interest of the decree holders had come to devolve upon the judgment debtors and the proceeding of the execution case, therefore, had become infructuous in the changed facts and circumstances.

The Miscellaneous Case No.49/2012 was initiated on the aforesaid petition filed by the judgment debtor-petitioner.

However, after hearing the parties, the learned court below has dismissed the miscellaneous case and directed the decree holder to proceed for delivery of possession in the execution case pending since last 20 years.

From the facts mentioned in the petition dated 11.05.2010 (Annexure-1) filed by the judgment-debtor, it is apparent that after the death of the original plaintiff Bharat Prasad during the pendency of the suit, his wife Kamla Devi and two sons namely Satyapal Prasad and Satydeo Prasad were substituted in his place and the eviction decree was passed jointly in their favour. The judgment debtor-petitioners have claimed that in private partition between Satydeo Prasad and Satypal Prasad the suit premises was allotted to the share of Satydeo Prasad and after the death of Satydeo Prasad, his widow Most. Badami Devi has sold the suit premises in his favour by sale deed dated 26.03.2010 during the pendency of the execution proceeding. It has also been the pleading of the judgment debtor-petitioners that they have at least become co-sharers of the suit premises by their purchase even if the case for partition between Satyapal Prasad and Satyadeo Prasad is disbelieved. In his reply (Annexure-2) the plaintiff decree holder-opposite party no.1 Satyapal Prasad has denied the case of partition and allotment of the suit premises in exclusive share of



the Satydeo Prasad. It has also been asserted that Most Badami Devi widow of Satydeo Prasad has no right to alienate the suit premises in favour of the judgment debtor-petitioner and no title and possession has been acquired by the judgment debtor-petitioner on that basis. The learned court below on appreciation of the evidence led by the parties has recorded the finding of fact that the story of partition between Satyapal Prasad and Satydeo Prasad could not be established and while recording this finding the learned court below has taken into particular notice the deposition of Badami Devi as A.P.W. 3 and the judgment debtor-petitioner as A.P.W.1.

Mr.Trivedi, learned senior counsel on behalf of the petitioners has reiterated the pleas raised in the court below and has emphasized that the joint decree has become inexecutable at the instance of one decree holder when the another decree holder has transferred the suit premises or at least her share in the suit premises to the judgment debtor. Reliance has been strongly placed on the decision of the Apex Court in the case of ***Jagdish Dutt Vs Dhrampal, 1999(3)SCC 644.***

After considering the submissions and the facts as well as the findings by the learned court below, it appears that the legal issue arising in the present revision application has been

answered by a three Judge bench of the apex court in the case of ***Pramod Kumar Jaiswal Vs. Bibi Husan Bano*** , AIR 2005 S.C.2857 and it has been ruled as follows:

“...35. Here in this case, the lessee has acquired only the rights of certain co-owner landlords and may have the right to work out his rights against the others. The right to work out his rights would not enable him to plead that the two rights in the whole of the property has come to vest in him. What is involved in the present case is the question whether on the acquisition of the rights of some of the co-owner landlords by the tenant, there is an extinguishment of the tenancy by merger as postulated by Section 111 (d) of the Transfer of Property Act. T. Lakshmipathi answer that question and with respect, answers that question correctly...”

“...36. A plain and grammatical interpretation of Section 111(d) of the Transfer of Property Act leaves no room for doubt that unless the interests of the lessee

and that of the lessor in the whole of the property leased, become vested at the same time in one person in the same right, a determination of the lease cannot take place. On taking an assignment from some of the co-owner landlords, the interests of the lessee and the lessor in the whole of the property do not become vested at the same time in one person in the same right. Therefore, a lessee who has taken assignment of the rights of a co-owner lessor, cannot successfully raise the plea of determination of tenancy on the ground of merger of his lessee's estate in that of the estate of the landlord. It is, thus, clear that there is no substance in the contention of the learned counsel for the appellants that in the case on hand, it should have been held that the tenancy stood determined and the application of the landlord for a direction to the tenant to deposit the rent in arrears should have been dismissed. The position of the appellants as

tenants continue and they are bound to comply with the requirements of the Rent Control Act under which the order for deposit has been passed against them. The High Court has rightly dismissed the revision...”

Their lordships in the aforesaid decision has also taken into notice the decision in the case of ***Jagdish Dutt Vs. Dharam Pal , (1999) (3) SCC 644***, relied upon by the learned senior counsel for the petitioners, and it has been observed that “...that was not a case dealing with merger under Section 111 of the Transfer of Property Act, we do not think it necessary to consider the correctness or otherwise of the above decision, though there may be merit in the submission on behalf of the respondents that the said decision cannot be said to lay down the correct law , even in respect of the effect of acquisition of co-ownership, rights by a person, claiming to obstruct the execution of a decree for eviction especially since that was also a claim of right by a judgment- debtor who had been directed to be evicted by the decree...”

In view of the aforesaid dictum as laid down by the apex court in ***Pramod Kumar Jaiswal (Supra)***, this Court comes

to the conclusion that the prayer of the petitioners for dismissal of the execution case as made in his petition dated 11.05.2010 has no merit and the learned court below has committed no error of jurisdiction or illegality in passing the impugned order.

The revision application is accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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