

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5743 of 2015

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Lalit Narayan Mithila University

.... Petitioner/s

Versus

Maharaniadhirani Kamsundari

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nivedita Nirvikar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 24-11-2015

Heard learned counsel Mr. Ajay Behari Sinha appearing

on behalf of the petitioner on the Interlocutory Application No.5334 of 2015. Although this interlocutory application was listed under the heading “For Orders (on petitions)”, the learned counsel for the petitioner submitted that the writ application itself may be heard in admission on merit. Therefore, I heard learned counsel in admission matter on merit.

2. This application under Article 227 of the Constitution of India has been filed by the judgment debtor-petitioner against the order dated 09.05.2014 passed by learned Subordinate Judge-IV, Darbhanga in Execution Case No.19 of 1989 whereby the court below has allowed the application filed by the decree holder-respondent and directed that a magistrate and police force be deputed for delivery of possession of the suit property to the plaintiff.



3. The learned counsel for the petitioner submitted that the court below while passing this impugned order dated 09.05.2014 did not consider the objection raised by the petitioner in the rejoinder to the application filed by the plaintiff-respondent to the effect that in fact the suit property was acquired by the State of Bihar in land acquisition proceeding and then was given to the petitioner wherein after construction of the building the petitioner is in occupation of the same. Therefore, if the impugned order is not set aside, the petitioner shall suffer serious loss and irreparable injury and it will be a grave injustice to the petitioner.

4. It appears that the plaintiff-respondent filed the suit for declaration of title and recovery of possession. It is admitted fact that the petitioner, who was defendant in the suit, appeared and filed contesting written statement but as has been submitted by the learned counsel for the petitioner subsequently the petitioner left *pairvi* and, therefore, the suit being Title Suit No.144 of 1987 was decided without contest. Thereafter the petitioner never challenged the said judgment and decree of the trial court. The plaintiff-respondent filed Title Execution Case No.19 of 1989 for execution of the decree. Since the delivery of possession was being resisted by the present petitioner several time, the plaintiff filed an application before the executing court

for deputing a magistrate and prayed for police force. The petitioner herein filed objection to the said petition. The court below has then passed the impugned order.

5. From perusal of the impugned order, it appears that in fact the court below has considered the objection raised by the present petitioner in the rejoinder. It is not the fact that the court below has not considered. The fact that the judgment and decree against the petitioner has not been challenged by the petitioner is admitted. Now, therefore, there is no reason as to why the plaintiff should not be delivered possession of the suit property. The court below in the impugned order considering the pros and cons and the facts of the entire case came to the conclusion that it is crystal clear that no objection was ever filed on behalf of the judgment-debtor. It is also crystal clear that the decree which the decree-holder wants to execute is of dated 21.06.1989 and since then the decree-holder is wandering hither and thither but in vain. Therefore, by disposing of the aforesaid petitions filed on behalf of both the parties the office was directed to send request letter to the concerned for one day salary of the executive Magistrate and also of the police force and allowed the application.

6. So far the submission of the learned counsel for the petitioner that in fact the suit properties were acquired by the State

of Bihar then the State of Bihar gave the land in possession of the petitioner is concerned, it is not the matter to be decided in this execution case by the executing court. Therefore, there is no question of any grave injustice arises because the executing court has to execute the decree as it is.

7. So far the question of title is concerned, it can only be decided in the suit and in the appeal that may be filed by the petitioner but not in the application when the plaintiff filed the application for granting delivery of possession of the suit. I, therefore, find no merit in this writ application. Accordingly, this writ application is dismissed and consequently the interlocutory application is also rejected.

(Mungeshwar Sahoo, J)

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