

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15239 of 2012

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Kishori Ram, son of Late Bechan Ram, resident of Village: Mapatpur, P.O. Nuaon, P.S. Ramgarh, District- Kaimur (Bhabhua), At present resident of 128/C, Patliputra Colony, Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Officer, Kaimur (Bhabhua).
3. The Sub-Divisional Officer, Sub-Division Mohania, District- Kaimur (Bhabhua).
4. The Circle Officer, Nuaon Block, District- Kaimur (Bhabhua).
5. Sri Mukhram Ram, son of Late Chauth Ram, residing at Village: Mapatpur, P.S. Rambagh (Nuaon) District- Kaimur (Bhabhua).
6. Sri Sakhrum Ram, son of Late Chauth Ram, residing at Village- Mapatpur, P.S. Ramgarh (Nuaon), District- Kaimur (Bhabhua).

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Durgesh Prasad Sinha
For the Respondent-State	:	Mr. Kumar Alam, SC-8
For Respondent nos.5 & 6	:	Mr. Ramakant Ram

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-08-2015

Heard Mr. Durgesh Prasad Sinha, learned counsel appearing on behalf of the petitioner, Mr. Kumar Alok, learned Standing Counsel No.8 for the State and Mr. Ramakant Ram, learned counsel appearing for the respondent nos.5 and 6.

The petitioner has questioned the entire proceedings arising from Encroachment Case No.08 of 2006-07 whereby the petitioner has been dispossessed from the house situated at plot no.121 (old) 291 (new), chak plot no.269 and survey plot no.246 having an area of 0.05 decimals in Mauza Mapatpur in the district of

Kaimur.

I have heard learned counsel for the parties and I have perused the records.

The records of the proceedings manifest that a title suit was instituted for declaration of title and recovery of possession in respect of the house standing on the plots in question by the respondents and which suit was decreed on 20.9.2000 in favour of the plaintiff and ex-parte against the father of the present petitioner. The father of the petitioner being aggrieved filed Miscellaneous Case No.13 of 2003 under Order- IX Rule-13 of the Code of Civil Procedure for setting aside the ex-parte decree and during its pendency the original defendant i.e. the father of the petitioner deceased and the petitioner has been substituted. In between the decree was executed, the decree-holders were granted the possession of the house in question but only to be dispossessed subsequently at the hands of the present petitioner. On 21.7.2009 the possession has been restored to the decree holders by the respondent-authorities and being aggrieved the petitioner is before this Court.

Prima-facie there is nothing for interference in the action of the respondents since it is undisputed that the decree is in favour of the present occupants of the property i.e. the private respondents.

The only issue which has been raised by Mr. Sinha,



learned counsel appearing on behalf of the petitioner to question the action taken by the respondents is that the dispute is private and thus no encroachment proceeding under the Public Land Encroachment Act, 1956 could have been initiated. The action of the respondent is defended by Mr. Kumar Alok, learned Standing Counsel No.8 on the anvil that the nomenclature of the proceeding may read as such but it is by virtue of the complaint made by the private respondents regarding the petitioner being in unauthorized occupation of the house in question that a proceeding was initiated for removal as the petitioner was a trespasser under the decree but which has inadvertently been registered as encroachment case. He submits that the effect of the entire action of the respondents is that even if the proceeding was registered as an encroachment case but the resultant effect is that the decree-holder has been put back on the decreetal property.

It is stated at the Bar that the miscellaneous application filed under Order-IX Rule-13 of the Code of Civil Procedure is yet pending adjudication, meaning thereby the decree in favour of the private respondents is operative.

In the circumstances so discussed and even though the action of the respondents in restoring the possession of the private respondents by virtue of the decree in their favour has been

inadvertently registered as a encroachment case but the same would not make any difference for its consequence was only in execution of the decree so passed in favour of the private respondents.

For the reasons aforementioned the writ petition is disposed of and this Court without interfering with the action impugned in this writ petition would grant liberty to the petitioner to raise all issues as raised herein, in the pending miscellaneous application.

(Jyoti Saran, J)

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