

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.763 of 2009

- =====
1. Md. Zahoor
 2. Md. Ishaque
 3. Md. Illiyas, all sons of Late Kaithu Mian and residents of Village Gerabari PO Korha, District Katihar
 4. Bibi Jamila
 5. Bibi Tajo
 6. Bibi Najo, All daughters of Late Kaithu Mian and residents of Village Gerabari PO Gerabari, PS Korha, District Katihar

..... Decree Holders - Petitioner/s

Versus

1. Samsul Haque, son of Late Gainu Mian
2. Md. Iqbal
3. Md. Firoz Alam, both sons of Sharif Ahmad
4. Rukhsana Khatoon
5. Sahin khatoon, both daughters of Late Sharif Ahmad
6. Sharif Ahmad, son of Late Mohammad Mian
7. Farida Khatoon, daughter of Late Gairu Mian
All residents of Mohalla Durgapur, PS Katihar and District Katihar
8. Md. Daud Alam
9. Md. Maqsood Alam
10. Md. Murad Alam, all sons of late Abdul Khalaque
11. Shafira Bano alias Bibi Safia Khatoon, widow of Later Abdul Khalique and all residents of mohalla Durgapur, PS Katihar and District Katihar
12. Razia Khatoon, daughter of Late Abdul Khalique and wife of Md. Razzaque
13. Md. Tabrej
14. Md. Aftab, both minor sons of Md. Jamil and they are under the guardianship of their father Md. Jamil and there is no adverse remark against the minor sons.
15. Md. Zamil, son of Jalil khalifa
16. Md. Jamal
17. Md. Noor
18. Md. Firoz
19. Rahina Khatoon alias Rehana Khatoon
20. Saira Khatoon, all sons, daughters and widow of late Md. Sayeed and residents of Mohalla Durgapur, PS Katihar and District katihar
21. Julekha Begum, daughter of Late Abdul Zabbar and wife of Nijamuddin
22. Hamida Begum, daughter of late Abdul Zabbar and wife of Md. Nasir
23. Shabnam Begum, daughter of Late Abdul Zabbar and wife of Md. Ali and all residents of Mohalla Durgapur, PS Katihar and District katihar

..... Judgment Debtors...Opposite parties

with

Civil Revision No.771 of 2009

- =====
1. Md. Zahoor
 2. Md. Ishaque
 3. Md. Illiyas, all sons of Late Kaithu Mian and residents of Village Gerabari PO Korha, District Katihar

4. Bibi Jamila
 5. Bibi Tajo
 6. Bibi Najo, All daughters of Late Kaithu Mian and residents of Village Gerabari PO Gerabari, PS Korha, District Katihar
- O.P. 1st party Decree Holders - Petitioners

Versus

1. Md. Daud
2. Md. Maqsood
3. Md. Murad, all sons of late Abdul Khalaque
4. Bibi Shafira Khatoon alias Bibi Safia Bano, widow of Late Abdul Khaliq
5. Razia Khatoon, daughter of Late Abdul Khaliq and wife of Md. Razzaque
6. Md. Tabrej
7. Md. Aftab, both sons of Md. Jamil
8. Md. Jamil, son of Jalil khalifa
9. Julekha Begum, daughter of Late Abdul Zabbar and wife of Nijamuddin
10. Hamida Begum, wife of Md. Nasir and daughter of late Abdul Zabbar
11. Shabnam Begum, wife of Md. Ali and daughter of Late Abdul Zabbar
all residents of Mohalla Durgapur, PS Katihar and District Katihar
..... Petitioners.....Judgment Debtors Opposite parties
12. Samsul Haque, son of Late Gainu Mian
13. Md. Iqbal
14. Md. Firoz Alam, both sons of Sharif Ahmad
15. Rukhsana
16. Sahin khatoon, both daughters of Late Sharif Ahmad
17. Sharif Ahmad, son of Late Md. Mian
18. Farida Khatoon, daughter of Late Gairu Mian
All residents of Mohalla Durgapur, PS Katihar and District Katihar
19. Md. Jamal
20. Md. Noor
21. Md. Firoz
22. Rehana Khatoon alias Rahina Khatoon
24. Saira Khatoon, all sons and daughters of late. Sayeed and residents of Mohalla Durgapur, PS Katihar and District katihar
.....O.P. 2nd party.....Judgment Debtors ... Opposite parties

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Appearance :

(In C.R. No.763 of 2009)

For the Petitioner/s : Mr. Md.Abu Haider & Md. Abu Shejar
For Opposite Party no. 13: Mr. Ratan Kumar Sinha
For other Opposite parties: Mr. P. K. Jaipuriyar, Mr. Ansuman Jaipuriyar
Mr. Suresh Pd Barnwal

(In C.R. No.771 of 2009)

For the Petitioner/s : Mr. Md. Abu Haider & Md.Abu Shejar
For Opposite Party no. 13: Mr. Ratan Kumar Sinha
For other Opposite parties: Mr. P. K. Jaipuriyar, Mr. Ansuman Jaipuriyar
Mr. Suresh Pd Barnwal

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

15 08-01-2015 Heard learned Counsel for the petitioners in both cases and learned Counsel for Opposite party no. 13 as well as learned Counsel for remaining Opposite parties.

The petitioners in both the revision applications are aggrieved by the order by which the executing court below has dismissed the execution case as barred by limitation.

The factual *expose'* is that Title Partition Suit No. 85 of 1970 was filed by Kaithu Mian (now deceased). The suit was decreed and a preliminary decree was passed on 29.1.1973. It has been accepted by the learned Counsel for the parties that the said preliminary decree itself was put to execution by the plaintiff Kaithu Mian but the execution case was dismissed holding that the preliminary decree could not be executed. It is also not in dispute between the parties that the final decree has been passed on 26.9.2001.

The plaintiff – Decree Holder Kaithu Mian died on 5.11.2001. Thereafter one Md. Yakub, claiming himself to have derived right over the suit property on the basis of **Will** which was not probated, levied execution case for execution of the final decree. This execution case was dismissed holding that Md. Yakub had no *locus standi* to levy the execution on the basis of an un-probated **Will**.

The heirs of the deceased plaintiff Kaithu Mian filed Execution Case No. 3 of 2006 on 21.6.2006. The defendants – Judgment Debtors raised objection to the maintainability of the execution case on various grounds and Miscellaneous Case No. 3 of 2007 was initiated by the executing court for determining those objections. By



order dated 6.9.2008, which has been assailed in Civil Revision No. 771 of 2009, the executing court has allowed Miscellaneous Case No. 3 of 2007 holding that the execution case is barred by limitation. By another order dated 27.2.2009, which is in assail in Civil Revision No. 763 of 2009, the executing court, in view of its decision in Miscellaneous Case No. 3 of 2007 (as mentioned above) has dismissed the execution case as barred by limitation.

After hearing the submissions on behalf of the petitioners as well as on behalf of the Opposite parties and after careful consideration of the materials on record it is clear that the final decree has been passed on 26.9.2001, which fact is not in dispute. The finding by the learned court below that the period of limitation for execution of the final decree will run from the date of the preliminary decree is simply preposterous and shocking to the conscience of this Court also.

From the reading of the impugned order dated 6.9.2008 it clearly transpires that the learned court below even could not conceive the tenor of the decision passed by their Lordships in the case of Ram Bachan Rai Vs. Ram Udar Rai, A.I.R. 2006 SC 2248. Their Lordships in that decision nowhere have laid down nor there is any such decision so far whereby the law has been laid down that the date of the final decree would be the date on which the preliminary decree has been passed.

In fact the learned Counsel for both parties have not disputed the aforesaid position in law. In that view of the matter, it is held that Execution Case No. 3 of 2006 is not barred by limitation and the

impugned orders passed in both revision applications are, accordingly, set aside.

In the result, the two revision applications are allowed. The executing court is directed to proceed with the execution case expeditiously in accordance with law.

(V. Nath, J)

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