

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20194 of 2012

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1. Raghu Nath Sah Son Of Late Rup Narayan Sah Residence Of Village - Mathurapur, Post : - Badaki Mahuli, Police Station - Karagahar, District - Rohtas
 2. Deomuni Sah Son Of Late Rup Narayan Sah Residence Of Village - Mathurapur, Post : - Badaki Mahuli, Police Station - Karagahar, District - Rohtas
 3. Deopati Sah Son Of Late Rup Narayan Sah Residence Of Village - Mathurapur, Post : - Badaki Mahuli, Police Station - Karagahar, District - Rohtas

.... Petitioners.

Versus

Nandu Sah Son Of Ramprasad Sah Resident Of Village: - Mathurapur, Post: - Badaki Mahuli, Police Station: - Karagahar, District : - Rohtas

.... Respondent.

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Appearance :

For the Petitioner/s : Mr. Dhaneshwar Prasad Gupta

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 22-12-2015

Heard learned counsel for the petitioners.

Petitioners have challenged the order dated 18.08.2012, passed by the Sub-Judge-I, Sasaram, in Execution Case No. 03 of 2004, whereby and whereunder objections raised by the petitioners have been rejected.

Shorn of unnecessary details, it is evident that brother of these three petitioners/objector/substituted legal representatives borrowed loan from the decree holder in the capacity of being *Karta* of the family for the welfare of the family and as he failed to pay back the amount along with interest as agreed amongst the parties, decree holder filed



Money Suit whereunder the borrower appeared, contested the suit. However ultimately, lost. Even then, no payment was made. Accordingly, Execution Case No. 03 of 2004 was drawn up against the judgment debtor for realization of the amount. During midst of execution proceeding, judgment debtor died leaving behind his remaining three brothers, the only legal representatives, who were impleaded and since thereafter, on one pretext or another, began to put hurdle in the execution proceeding and the present one happens to be the second round of litigation.

As is evident from order dated 16.05.2008 (no serial number has put thereupon), it is evident that at an earlier occasion, an objection in terms of Order XXI Rule 58 of the C.P.C. was made on behalf of these petitioners which was entertained and on the basis thereof, Misc. Case No. 04 of 2008 was registered on the assumption that vide order dated 04.06.2005 as well as 08.04.2005, the immovable properties have been attached. However, the petitioners challenged the order dated 04.06.2005 as well as 08.04.2005 under C.R. No. 1121 of 2008, and the same was allowed vide order dated 12.09.2008, after setting aside the respective orders as those orders did not speak regarding attachment. Hence, remitted the

matter back to the learned lower court to pass fresh order.

From the order impugned, it is evident that hearing has been made on behalf of respective parties, over petition dated 06.06.2007, that means to say, a year before the order dated 12.09.2008, passed in C.R. No. 1121 of 2008 (Annexure-3) containing similar ground.

After going through the order impugned, it is evident that petitioners have not taken recourse to press the point in terms of order dated 12.09.2008, passed in C.R. No. 1121 of 2008. Petition dated 06.06.2007 is Annexure-2, wherein objection has been raised on behalf of petitioners on the score of being impleaded as a party after death of judgment debtor as their legal representatives and further, stating the fact that though the properties were jointly purchased but in the year 1999, there was partition in the family wherein, they have detailed mode of partition as well as allotment of share followed by identification of respective Survey Plot Numbers.

Furthermore, it has also been submitted that these petitioners are not responsible for satisfying the decretal amount as the lands having allotted to the share of judgment debtor, had already been sold by him. The learned lower court had heard the petitioners with regard to the aforesaid objection

and rejected the prayer.

It has been contended on behalf of petitioners that as per Order XXII Rule 12 of the C.P.C., substitution procedure as prescribed thereunder not applicable during course of execution proceeding. That being so, substitution of petitioners under the banner of Order XXII Rule 3, 4 happens to be wrong. Then it has been submitted that legal representatives should be brought-up on record in terms of Section 50 of the C.P.C. and after being identified, there should be follow-up action in terms of Order XXI Rule 22 of C.P.C. wherein substituted legal representatives should be noticed to furnish show-cause as to why the decree should not be executed against them. Because of the fact that learned lower court had failed to adopt the aforesaid procedure, on account thereof, their valuable right has been curtailed and on account thereof, the order impugned is fit to be set aside.

There is no controversy with regard to identification of these three petitioners to be legal representatives of deceased who died unmarried, leaving no Class-I heir. After substitution of these petitioners, they were noticed and after their appearance, they put an objection, (Annexure-2), and that objection, as it divulges, satisfies the ingredients of show-cause as is required under Order XXI Rule 22, whereunder petitioners

have categorically stated that execution of decree should not be proceeded against them and further, by the order impugned, learned lower court, considering the totality of the event, rejected the prayer.

As such, I do not see any cogent reason to interfere with the order impugned. The petition is dismissed.

(Aditya Kumar Trivedi, J)

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