

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14960 of 2015

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Shailendra Kumar Tiwary & Ors

.... Petitioner/s

Versus

The Municipal Commissioner, Purnea & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sachindra Kumar Tiwary

For the Respondent/s : Mr. Bijendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 27-11-2015

Heard the learned counsel, Mr. Rajeev Ranjan Jha for the petitioners on I.A. No.8028 of 2015.

This I.A. has been filed by the petitioners praying for stay of further proceeding in Execution Case No.2 of 2007 pending before the Additional Munsif IV, Purnea. The learned counsel, Mr. Jha for the petitioners at the time of hearing of this I.A. submitted that the writ application itself may also be heard on merit in admission matter.

In view of submission, I heard him on merit in admission matter also.

This application under Article 227 of the Constitution of India has been filed by the interveners-petitioners against the order dated 25.08.2015 passed by the learned Additional Munsif IV, Purnea in Title Execution Case No.2 of 2007 whereby the court below rejected the objection filed by the interveners-

petitioners under Order 21 Rule 97 C.P.C.

It appears that the plaintiff-respondent Nos.3 and 4 filed Title Suit No.624 of 1993 for declaration of title and recovery of possession of the suit property against the defendant-judgment debtor-respondent Nos.1 and 2. The suit was decreed ex parte on 25.11.2005. The defendants in the said suit did not file any appeal challenging the ex parte judgment and decree nor they filed any application under Order 9 Rule 13 C.P.C. Thereafter, the plaintiff-decree holder filed Execution Case No.2 of 2007. The present interveners-petitioners filed the objection under Order 21 Rule 97 C.P.C. for dismissal of the execution case on the ground that in fact, there is a public road on the suit land which is being used by the public at large for the last 50 years. The learned court below by the impugned order after hearing both the parties and considering the materials on record recorded a finding that the application of the objection under Order 21 Rule 97 C.P.C. has got no merit and accordingly, rejected the said objection. Against this order, this application under Article 227 of the Constitution of India has been filed.

The learned counsel, Mr. Jha relying on the decision of the Hon'ble Supreme Court in the case of **Sameer Singh & Anr. v. Abdul Rab & Ors., 2015(1) PLJR 64 (SC)** submitted that this

application under Article 227 of the Constitution of India is maintainable because the court below has rejected the objection under Order 21 Rule 97 C.P.C.

Order 21 Rule 97 C.P.C. reads as follows:

“97. Resistance or obstruction to possession of immovable property-(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule(1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

(3) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to the applications under this rule.”

Order 21 Rule 101 C.P.C. reads as follows:

“101. Question to be determined- All questions(including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

In view of this provision, the right, title or interest in the

suit property is to be determined by the Executing Court under

Order 21 Rule 97 C.P.C.

The provision as contained under Order 21 Rule 103 reads as follows:

“103. Orders to be treated as decrees- Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.”

In the present case, the present petitioners are neither claiming any title nor interest in the suit property and their claim is only that they and the public at large are using the suit property for last 50 years and that no notice was ever served on the Commissioner validly etc. The court below considering all these submissions and considering the facts by the impugned order rejected the application finding it devoid of any merit.

So far the decision relied upon by the learned counsel for the petitioners i.e. Sameer Singh(supra) is concerned, it may be mentioned here that in that case, two questions were formulated by the Executing Court. The question no.1 was whether the transferee Executing Court has jurisdiction to adjudicate the present objection filed by the applicants under Order 21 Rule 97, 99 and 101 C.P.C. The Executing Court in that case held that since the execution case has already been disposed of on full satisfaction and is a transferee Court to execute the decree passed by the

Calcutta High Court, the Executing Court had no jurisdiction to decide the objection under Order 21 Rule 97 C.P.C. The High Court held that it is a decree within the meaning of Order 21 Rule 103 C.P.C. The Supreme Court held that since the application was not adjudicated on merit, the application under Article 227 of the Constitution of India is maintainable and accordingly, directed the High Court to decide the matter under Article 227 of the Constitution of India. In the present case, the facts are otherwise. In the present case, the court below has decided on merit of the case pleaded by the interveners-petitioners.

Therefore, in my opinion, this writ application is not maintainable and accordingly, this application under Article 227 is dismissed as not maintainable. The I.A. is consequently rejected.

(Mungeshwar Sahoo, J)

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