

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17298 of 2010

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Sheela Devi wife of Late Ram Baran Sao, resident of Mohalla- Bari Keshopur, P.O. + P.S.- Jamalpur, Distt.- Munger

.... Petitioner/s

Versus

1. Lalmani Devi widow of Late Sambhu Nath Gupta, resident of Mohalla- Sadar Bazar, P.O. + P.S.- Jamalpur, Distt.- Munger
2. Mona Kumari daughter of Late Sambhu Nath Gupta
3. Romi Kumari daughter of Late Sambhu Nath Gupta
4. Soni Kumari daughter of Late Sambhu Nath Gupta
5. Satish Kumar Gupta son of Late Sambhu Nath Gupta
6. Durga Prasad Gupta son of Late Bhim Sao

Respondent nos.2 to 6 are resident of Mohalla- Sadar Bazar, P.O. + P.S.- Jamalpur, Distt.- Munger

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anshuman, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

3 06-02-2015 The present application has been filed under section 227 of the Constitution of India against the order dated 27th July, 2010 passed by the learned Munsif-1, Munger in Title Execution Case No.4 of 2008 whereby the petition on behalf of the petitioner (judgment-debtor) for dismissing the execution proceeding under section 28(3) of the Specific Relief Act, 1963 has been rejected.

Title Suit No.23 of 1996 was filed by the respondents (plaintiffs in the court below) seeking an order that the petitioner (defendant in the court below) be directed by a decree of court to execute the returned sale deed in respect of the suit house on



receiving consideration money of Rs.20,000/- (twenty thousand) from the plaintiffs as per terms of the registered agreement dated 28th April , 1990 in favour of the plaintiffs within the date to be fixed by the court failing which the court be pleased to execute the sale deed in question on behalf of the defendant in favour of the plaintiffs. The said title suit was decided in favour of the plaintiffs vide judgment and decree dated 18th August, 2007 and 30th August, 2007 respectively. The appeal has been preferred by the defendant before the appellate court vide Title Appeal No.43 of 2007. The said title appeal is pending for hearing before the court of learned 4th Additional District Judge, Munger. During the pendency of the title appeal, an execution case vide Title Execution Case No.4 of 2008 was filed with a prayer that the decree holder be permitted to deposit a sum of Rs. 20,000/- (twenty thousand) in the court and the judgment-debtor be directed to receive the said amount and execute a deed of returned sale-deed in respect of the suit premises. In case, the judgment-debtor failed to receive and execute the returned sale deed, then the court may appoint any officer to execute the returned sale deed in respect of the house in question.

The petitioner filed an objection petition on 17th September, 2009 in which the objection relating to non-

compliance of section 28(3) of the Specific Relief Act,1963 was raised and it has been pleaded to dismiss the execution case on this ground alone. The learned executing court vide impugned order dated 24th July, 2010 passed in Execution Case No.4 of 2008 disposed of the petition filed on behalf of the petitioner directing the parties to follow the direction of the decree.

Learned counsel for the petitioner has submitted that the plaintiffs-decree holders (respondents in the present case) have not fulfilled the contract as per decree within time so the justice requires to rescind the contract of decree.

In my view, the court below has not erred in law. Admittedly, the petitioner has preferred an appeal against the decree under execution. Hence, this Court does not find any error of jurisdiction or any illegality in the impugned order. The petitioner shall have the liberty to approach the appropriate court with appropriate prayer against the execution proceeding.

With the aforesaid observations, the application is disposed of.

(Ashwani Kumar Singh, J)

Md.S./-

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