

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19103 of 2010

With

Interlocutory Application No.1712 of 2015

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Virendra Kumar Verma, S/O Late Parmeshwar Dayal, R/O Vill.- Murarpur, P.S.-
Laheri, Distt.- Nalanda

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Nalanda
2. District Magistrate, Nalanda
3. Superintendent of Police, Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harshvardhan Shivsundaram
For the Respondent nos.1to3: Mr. Anjani Kumar, AAG-6
Mr.Sanjay Kumar, AC to AAG-6
For the Intervenor : Mr.Surendra Kishore Thakur

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 12-03-2015

Heard the parties including the learned counsel for the intervenor, who has filed I.A.No.1712 of 2015 for being added as party respondent.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondents particularly the respondent District Magistrate, Nalanda to depute a Magistrate and armed forces for delivery of possession to the petitioner and his brothers over a plot of land bearing khata no.48, plot no.365, area 15 decimals situated in Mauza-Chak Hajian (Mohalla-Ramchandrapur), P.S.-Bihar in the district of Nalanda (hereinafter to be referred to as the lands in question) in the light of the order dated 27.03.2009/31.03.2009 passed by the learned Sub-Judge 1st, Bihar Sharif, Nalanda in Execution Case No.12/86/76/94.

3. Learned counsel appearing on behalf of the petitioner submits that Title Suit No.41 of 1977 and Title Suit No.116 of 1978



were brought by the father and grand-mother respectively of the petitioner with respect to the lands in question and finally by the judgment and decree dated 23.08.1986 passed by the learned Additional Sub Judge III, Biharsharif, Nalanda, aforesaid suits were decreed. It is the case of the petitioner that Title Appeals No.54/86 and 55/86 brought by some of the defendants against the aforesaid judgment and decree passed by the learned trial court were ultimately dismissed by judgment dated 22.09.1993 passed by the learned 3rd Additional District Judge, Nalanda. It is further pointed out that second appeals No.634 of 1993 and 635 of 1993 brought by the judgment debtors were finally dismissed by an order dated 25.06.1998. Therefore, petitioner levied the Execution Case No.12/86/76/94 for executing the aforesaid decree. According to the petitioner, learned Executing Court by the order dated 27.03.2009 directed the respondent District Magistrate and respondent Superintendent of Police for deputation of a Magistrate with armed forces for giving the delivery of possession to the petitioner and his brothers over the lands in question, yet the order is not being complied with and armed forces with a Magistrate is not being deployed by the respondent District Magistrate as also the Superintendent of Police. Therefore, the present writ petition has been filed seeking a direction to the aforesaid respondents for complying the order passed by the learned Executing Court.

4. A detailed counter affidavit as also supplementary counter affidavit on behalf of the respondent nos.2 and 3 have been filed resisting the prayer made on behalf of the petitioner. Learned AAG-6 appearing on behalf of the respondents submits that, in fact, the judgment and decree passed in Title Suit No.116 of 1978 as also Title Suit No.41 of 1977 were collusive one as the lands in question



was never in possession of the Ex-landlord and, therefore, the Ex-landlord had no right to settle the lands in question in favour of the vendor of the petitioner or his ancestor. According to him, there was no occasion for decreeing the suit in favour of the petitioner. It is the case of the respondents that they have filed separate Title Suit No.145 of 2014 in the court of learned Sub-Judge, Nalanda for grant of appropriate relief(s) including that the judgment and decree dated 23.08.1986 passed in Title Suit No.116 of 1978 is not binding upon them in which the present petitioner is defendant no.2. It is also the case of the respondents that Misc. Case No.21 of 2009 was filed on behalf of the State of Bihar as also District Collector, Nalanda under Section 47 and 151 of the C.P.C. for recalling the writ of delivery of possession in the aforesaid Execution Case No.12 of 86/76 of 94. It is contended that the aforesaid Misc.Case was directed to be listed along with the Execution Case for passing an appropriate order, yet matter is not being decided by the learned Sub-Judge 1st, Biharsharif, Nalanda. It is pointed out that in the aforesaid Misc.Case the present petitioner is opposite party no.2 and he has already entered his appearance through his counsel. By referring to the provisions of Order XXI Rule 29 C.P.C., learned AAG-6 submitted that the learned Executing Court is obliged to stay the execution proceeding brought by the petitioner in the factual matrix of the case, but no final order is being passed by the learned Executing Court. Therefore, it is pleaded that, in the interest of justice, the learned Executing Court may be directed to dispose of the Misc.Case No.21 of 2009 and only thereafter it may proceed with the execution case brought by the present petitioner. In support of his above contention, he has placed reliance on a judgment of the Hon'ble Apex Court in the case of Ghan Shyam Das Gupta & Anr. Vs. Anant Kumar Sinha & Ors. (AIR 1991 SC 2251 (para 8).



5. After having heard the parties and on consideration of the materials available on record, this Court finds that there is no dispute that T.S.No.41 of 1977 and T.S.No.116 of 1978 brought by the ancestors of the petitioner with respect to lands in question were decreed by judgment and decree dated 23.08.1986 passed by learned Sub Judge-III, Biharsharif (Nalanda). There is also no dispute that Title Appeal No. 54 of 1986 and Title Appeal No.55 of 1986 filed against the aforesaid judgment and decree passed by the learned trial court were dismissed by a common Judgment dated 22.09.1993 passed by the learned Additional District Judge-III, Nalanda at Biharsharif. S.A. Nos. 634 of 1993 and 635 of 1993 were also dismissed. But, it is also equally true that the validity and correctness of the part of the judgment and decree passed in favour of the writ petitioner is under challenge in a separate Title Suit brought by the State of Bihar and its functionaries in which the present petitioner is a party. This is also not in dispute that the State of Bihar and its functionaries have filed Misc.Case No.21 of 2009 for recalling the writ of delivery of possession and in that Misc. Case also the present petitioner is a party. However, unfortunately that Misc. Case has not been disposed of till date by the learned Sub-Judge 1st, Biharsharif, Nalanda, who is the Executing Court also with respect to decree passed in favour of the petitioner. The respondents herein has not been able to get any stay order regarding Execution Case filed by the petitioner, yet the direction issued by the Executing Court is not being complied with by the respondent no.2 and 3. If the Executing Court is/was of the opinion that its order is being deliberately violated either by respondent no.2 or 3, then it could have taken appropriate steps against them in terms of Section 10 of The Contempt of Courts Act, 1971, but admittedly that has not been done till date.

6. In the factual matrixes of the case and for the ends of justice as also in view of the pendency of fresh Title Suit and Misc.Case filed by the State of Bihar and its functionaries, this Court disposes of the present writ petition with a direction to the learned Executing Court to decide the Misc.Case filed by the State of Bihar and its functionaries at the earliest preferably within a maximum period of six months from the date of receipt/production of a copy of the present order. If in the aforesaid Misc. Case the State of Bihar and its functionaries fail to get required relief or/and they fail to get an appropriate stay order in their favour in the pending T.S. No.145 of 2014 within the aforesaid period of six months, then in that case, the respondent no.2 and 3 shall be obliged to depute a Magistrate and armed forces for delivery of possession to the petitioner over the lands in question. I.A.No.1712 of 2015 stands accordingly disposed of. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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