

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3817 of 2014

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Dr. Chandra Kishore Kumar

.... Petitioner/s

Versus

Shanti Devi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anju Kumari @ Anju Narain

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 12-01-2016 1. Heard the learned senior counsel, Mr. Rajendra Narain,
on behalf of the petitioner.

2. By the impugned order dated 22.11.2013, the learned
Sub Judge IV, East Champaran, Motihari in execution Case No.5
of 2010 admitted the Misc. Case No.38 of 2013 for decision on
merit.

3. Perused the impugned order. It appears that the
partition suit was decreed and thereafter, final decree was prepared
and the petitioner filed Execution Case being Execution Case No.5
of 2010 for delivery of possession of the property allotted in his
favour. In the said execution case, an application under Order 21
Rule 97 was filed by one Shanti Devi claiming 2 decimal of land
out of the land allotted in favour of the petitioner. That application
was registered as Misc. Case No.38 of 2013. Thereafter, the

petitioner filed application for issuance of writ of delivery of possession. The Court below stayed the delivery of possession and admitted the Misc. Case No.38 of 2013 for decision on merit.

4. The grievance of the petitioner is that if the order is allowed to stand and if the delivery of possession is stayed till the disposal of the Misc. case, it will occasion failure of justice. According to the learned counsel, it will also delay the execution of the delivery of possession. The learned counsel further submitted that in fact the objector, i.e., petitioner of Misc. Case have been set up by the defendant and if the writ of delivery of possession is not granted then the aim of the objector will be fulfilled.

5. It is settled principle of law as has been held by the Hon'ble Supreme Court in the case of *Bachhaj Nahar Vs. Nilima Mandal* (2008) 17 SCC 491= AIR 2009 SC 1103 that **'any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of CPC.'** It may be mentioned here that a right has been granted to a third person to object delivery of possession and to protect his interest and possession over any part of the property under execution by filing objection under Order 21 Rule 97, 99 of the code of Civil

Procedure.

6. The Hon'ble Supreme Court in *AIR 2002 SC 3083 Tanjim-E- Sufia Vs. Bibi Haliman* has held that ***“Order 21 Rule 97 CPC entitles an objector to be heard before passing any order on the application moved by the decree holder.”***

7. The Hon'ble Supreme Court also relied upon the earlier decision in the case of *Brahmdeo Chaudhary Vs. Rishikesh Prasad 1997 (3) SCC 694* and held that ***‘the executing Court must first adjudicate upon the objection of the objector on merits under Rule 97 sub Rule 2 of Order 21 CPC. It should not be insisted that possession be handed over first and an application under Order 21 Rule 99 be moved later on complaining about dispossession.’***

8. In view of the above settled proposition of law laid down by the Supreme Court, the Court below has rightly held that the Misc. case shall be decided and has admitted the same. Therefore, the order cannot be interfered with in supervisory jurisdiction. Thus, this writ application is dismissed.

Sanjeev/-

(Mungeshwar Sahoo, J)

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