

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.195 of 2013

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Poonam Devi W/O Achhay Lal Mishra Resident Of Mohalla Raisar, Police Station Kotwali, P.O. Basudeopur, District Munger.

.... Petitioner

Versus

1. Arti Devi W/O Jawahar Mishra Resident Of Mohalla Raisar Post Office Basudeopur, Police Station Kotwali, District Munger, At Present Residing At Village Kumadpur, Post Office Rangra, Police Station Gopalpur, District Bhagalpur.

2. Neelam Devi W/O Yogendra Giri Resident Of Village Gdho Jalaiya Tola Bhajan Gomar Police Station Vidyapati Nagar, District Samastipur, At Present Residing At Mohall Madhopur, Police Station Kotwali, Post Office Munger, District Munger.

.... Respondents

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Appearance :

For the Petitioner/s :Mr.S.S.Dwivedi, Sr.Adv.

:Mr. Harshwardhan Sahay, Adv.

For the Opp.Party 1st Set.: Mr. Din Bandhu Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-09-2016

Heard Mr. S.S.Dwivedi, learned senior counsel appearing for the petitioner and the learned counsel who has appeared for the opposite party no.1.

This civil revision application has been filed against the order dated 07.09.2013 passed in Miscellaneous Case No.08/2013 by learned Sub Judge I, Munger whereby the learned court below has rejected the petition filed by the opposite party-petitioner praying for rejection of the Miscellaneous Case initiated on the petition filed under Order 21 Rule 99 C.P.C by the opposite party no.1.



The facts are not in dispute that the petitioner filed the suit for specific performance of contract against the opposite party no.2. The said suit was eventually decreed and thereafter the sale deed was also executed through the process of the court in favour of the petitioner in execution proceeding levied thereafter by the decree holder-petitioner. The delivery of possession was effected by the executing court on 09.04.2013. After recording its satisfaction the execution case was disposed of on 25.04.2013.

On 27.04.2013 an application was filed under Order 21 Rule 99 C.P.C by the opposite party no.1 claiming for restoration of her possession on the ground that she was purchaser of the property subject matter of T.S.No.107/2010 by sale deed dated 24.05.2010. It has been the case of the opposite party no.1 that the T.S.No.107/2010 was filed later on by the plaintiff on 06.07.2010 but she was not impleaded as a party in the suit. The opposite party no.1 alleged her dispossession from the property in execution of the decree passed in T.S.No.107/2010.

The decree holder-petitioner, however, filed the petition under Order 7 Rule 11 C.P.C praying for dismissal of the Miscellaneous Case No.08/2013 filed by the opposite party no.1. By the impugned order the learned court below after hearing the parties has turned down the prayer of the decree holder for dismissal of the



Miscellaneous Case No.08/2013.

Mr. Dwivedi, learned senior counsel for the petitioner has made two fold submissions. It has been firstly contended that in view of the disposal of the execution case on full satisfaction on 25.04.2013, the petition filed on 27.04.2013 by the opposite party no.1 was not entertainable as there was no execution case pending on that day. It has been next contended that in any view of the matter in view of the report by the Najir submitted in the execution case, the opposite party no.1 is not the person who had been dispossessed in execution of the decree and in that view of the matter also the opposite party no.1 could have no locus standi to maintain the petition under Order 21 Rule 99 C.P.C.

On the base of aforesaid two contentions, it has been further argued that the proceeding further with the miscellaneous case would only result in harassment to the petitioner, and as the opposite party no.1 has the option to maintain an independent suit, the petition filed by her under Order 21 Rule 99 C.P.C was not fit to be entertained.

After considering the submissions and perusal of the impugned order as well as the materials on record, it is evident that the decree for specific performance of contract passed in T.S.No.107/2010 was put to execution by the decree holder-petitioner



and the delivery of possession was also obtained on 09.04.2013. The opposite party no.1 thereafter filed the petition under Order 21 Rule 99 C.P.C complaining of illegal dispossession in execution of the decree. The plea of the petitioner that the opposite party no.1 was not the person who was dispossessed during the course of execution, on the basis of the report of the Najir, cannot preclude the court from legal exploration of the said question after granting opportunity to the opposite party no.1 to establish the assertions made by her. The intention of the legislature behind the provisions as contained in Order 21 Rule 97 upto 106 C.P.C. is to shorten the litigation by providing for determination of the issues arising due to the reason of the execution of the decree, by the executing court itself. This ambit and scope of those provisions have been elaborately considered by the apex court in the case of ***Sameer Singh Vs. Abdul Rab, (2015)1 SCC 379*** holding the same to be complete code in themselves. The contention on behalf of the petitioner that the opposite party no.1 may maintain a separate suit in the facts and circumstances of the case cannot be a ground to dismiss the petition filed by her at the threshold, unless the parties are allowed to establish their rival cases by leading evidence. The learned court below, in this view of the matter, has committed no error of jurisdiction or illegality in passing the impugned order.

This revision application is, accordingly,



dismissed.

However, no observation in this order shall prejudice the case of either of the parties in Miscellaneous Case No.08 of 2013 which shall be decided on its own merits.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2016
Transmission Date	

