

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.215 of 2016**

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Lallan Prasad Gupta

.... Appellant/s

Versus

Dumraon Properties Enterprises & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nand Kishore Prasad Sinha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

2 11-08-2016

Heard learned counsel Mr. Nand Kishore Prasad Sinha

for the petitioner.

2. Perused the order dated 19.03.2016 passed by learned Munsif, Dumraon in Execution Case No.05 of 1991 whereby the court below has rejected application filed by the plaintiff to stay the further proceeding in Execution Case No.05 of 1991 during the pendency of Title Suit No.220 of 2014/814 of 2014.

3. It appears that eviction suit was filed by the plaintiff-respondent against the petitioner in the year 1980 under the B.B.C. Act. The plaintiff claimed that he has purchased the property from Dumraon Raj in the year 1963 and the defendant was tenant therein who had defaulted in payment of rent. The defendant filed contesting written statement alleging that the plaintiff is not the owner of the property. In fact the defendant has



acquired title by adverse possession. The suit was decreed up to the High Court. The present petitioner filed S.L.P. No.25118 of 2010 before the Supreme Court. The Supreme Court also dismissed the same on 24.09.2012. Review application was filed which was also dismissed by the Supreme Court on 10.01.2013 and then curative application was filed being No.109 of 2013 which was also dismissed on 10.07.2013. Thereafter the present title suit has been filed for declaration of title.

4. At the time of hearing of this civil miscellaneous application the learned counsel for the petitioner produced copy of the judgment of lower appellate court passed in Title Appeal No.09 of 1991. From perusal of the judgment, it appears that before the court evidences were adduced by both the parties claiming their title. The claim of the plaintiff based on the registered sale deed of the year 1963 whereas the claim of the present petitioner was acquisition of title by adverse possession. After considering the evidences both oral and documentary the lower appellate court clearly recorded a finding that the plaintiffs have been able to prove acquisition of title as they have purchased the property from the original owner by registered sale deed in the year 1963. The claim of the acquisition of title by adverse possession was negatived. However, at the end of the judgment



the Court held that since this is an eviction suit, the question of title cannot be decided and, therefore, observation was made that the petitioner may file suit for declaration of title. Ultimately the court below held that there is relationship of landlord and tenant and has decreed the suit. Second Appeal was dismissed. Then S.L.P. before the Supreme Court was also dismissed as aforesaid. Now, after dismissal of the curative application the present suit has been filed for declaration of title. Considering all these aspect of the matter the learned court below held that the further proceeding in execution case cannot be stayed in view of the above facts.

5. The learned counsel for the petitioner relying on Order 21 Rule 29 CPC submitted that when suit is pending between both the parties the further proceeding in execution case has to be stayed.

6. Order 21 Rule 29 CPC reads as follows:

“29. Stay of execution pending suit between decree holder and judgment debtor.- Where a suit is pending in any court against the holder of a decree of such court or of a decree which is being executed by such court, on the part of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:”

7. In view of this provision power has been conferred



and the discretionary jurisdiction has been given to the court to stay the execution case considering the facts and circumstances of the case. It is not mandatory that whenever a title suit is filed the execution case should be stayed. **The Hon'ble Supreme Court in the case of M/s Atma Ram Builders Private Limited Vs. A.K.Tuli & Ors. (2011) 6 Supreme Court Cases 385** has held that it is deeply regrettable that in our country often litigations between the landlord and tenant are fought up to the stage of the Supreme Court and when the tenant loses in this Court then he starts a second innings through someone claiming to be a co-tenant or as a sub-tenant or in some other capacity and in the second round of litigation the matter remains pending for years and the landlord cannot get possession despite the order of this Court. The time has come that this malpractice must now be stopped effectively.

8. In view of the above facts and circumstances of the case that the eviction suit is of the year 1980 and the matter went up to Supreme Court and it was decided in the year 2013 i.e. after 33 years. When the tenant has lost the case after 33 years, he has now filed the present suit for declaration of title. The suit will be decided on its own merit but for that on the basis of decree which was obtained after 33 years of fighting cannot be stayed and

learned court below has, therefore, rightly rejected the application.
Accordingly, I find no reason to interfere with the impugned
order. Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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