

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10092 of 2013
In
C.R. 1940 of 2006

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1. (a) Jaydish Sah (b) Baleshwar Sah (c) Ashok Sah (d) Krishna Kumar Gupta, (e) Rakesh Kumar Gupta, all sons of late Bahadur Sah, residents of Village-Dhanauti, P.O. & P.S. Hajipur Town, Distt-Vaishali.

.... Petitioner/s

Versus

1. Kameshwar Chaudhary son of Dular Chaudhary
 2. Amod Chaudhary son of Kameshwar Chaudhary
 3. Jhappal Chaudhary son of Kameshwar Chaudhary
 4. Lalmuni Devi daughter of Kameshwar Chaudhary
 5. Pyari Kumari daughter of Kameshwar Chaudhary
 6. Pramila Kumari daughter of Kameshwar Chaudhary, all residents of Village-Dhanauti, P.O. & P.S. Hajipur Town, Distt-Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma, Advocate
 Mr. Arun Kumar Lal, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 22-08-2016

Heard learned counsel for the petitioners.

2. Gone through the order impugned.

3. Although neither the judgment nor the decree has been attached with the petition but certified copy thereof has been furnished by petitioners during course of hearing.

4. Schedule-1 is the disputed land which bears description CS Khata No. 52, CS Plot No. 53, RSP No. 119 (K), area 6 Dhurs including one Jamun Tree properly identified by the boundary, North-Plaintiff, South-Plaintiff, East-Defendant and West-Road.

5. The decree speaks with regard to finding of the Court as “*the suit and the same be decreed on contest but without*

cost. It is hereby held that the R.S. entry with respect to suit land under RSP No. 119(K) is invalid not binding against the plaintiffs. Plaintiffs are also entitled for recovery of possession over suit land and defendant is directed to hand over vacant possession of suit land to plaintiffs within one month”.

6. The decree did not specify whether there happens to be any kind of temporary or permanent structure existing thereupon save and except presence of one Jamun tree. In that event, during course of execution of decree as directed, the Nazir was expected to have properly demarcated the area comprising six Dhurs as per terms of judgment and decree and further, would have given vacant possession irrespective of construction having found.

7. Furthermore, the Court is bound to execute the decree in the same form in which it has been passed. For better appreciation Order XXI Rule 35 of the CPC is to be taken note of which is quoted hereinbelow:-

35 . Decree for immovable property—

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming the beat of drum, or other customary mode, at some convenient place, the substance of the

decree.

(3) Where possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

8. Therefore, finding of the learned lower court that presence of brick wall over the disputed land was not to be demolished in the background of the fact that the same has not been directed under the judgment and decree happens to be misconceived, otherwise, if allowed, would frustrate the judgment and decree whereunder decree holder could not be able to retain the possession comprising 6 Dhurs with specified boundary. On account thereof, order dated 08.09.2006/11.09.2006 passed by the learned lower court in Execution Case No. 10/2000 is set aside. Petition is allowed.

9. The matter is remitted to the learned lower court to proceed afresh in accordance with law.

(Aditya Kumar Trivedi, J)

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