

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.115 of 2013

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PREM KUMAR S/o Late Sant Sharan Singh At present resident of Mohalla-Saidpur (Musallahpur), P.S.-Sultanganj (Patna City) District-Patna permanent resident of village-Mauja, P.S. and P.O.-Baraihia, District-Lakhisarai.

.... Petitioner.

Versus

1.Pankaj Kumar S/o Late Shambhu Nath Resident of Mohalla-Musallahpur Dwarika Lane, P.S.-Kadamkuan, P.O.-Mahendru, District-Patna.

.... Opposite Party.

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No. 2, Adv

For the Respondent/s : Mr. Parmeshwar Mehta, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 30-03-2016 Heard Mr. Manish Kumar No. 2, learned counsel appearing on behalf of the petitioner as well as learned counsel for the opposite party.

2. The present revision application has been filed against the order by which the learned court below has turned down the prayer made on behalf of the petitioner for dismissing the miscellaneous case filed under Order 9 Rule 13 on the basis that the decree has been fully satisfied in the execution case.

3. The facts are not in dispute that the suit for specific performance of contract was filed by the petitioner as the plaintiff, impleading two defendants namely Pawan Kumar and Pankaj Kumar. It was the case of the plaintiff-petitioner in the suit that Pawan Kumar as guardian and karta of the family had



executed the agreement for sale in favour of the plaintiff for the suit land. However, Pankaj Kumar in the said suit was impleaded as minor defendant under the guardianship of his brother Pawan Kumar. The said suit however was decreed ex parte against both the defendant nos. 1 and 2. The defendant nos. 1 and 2 filed Miscellaneous Case No. 01 of 2009 under Order 9 Rule 13 C.P.C praying for setting aside the ex parte decree. The Plaintiff-petitioner also filed Execution Case No. 1 of 2008 praying for execution of the decree for specific performance of contract. It would also be relevant to mention that further proceeding of the execution case had been stayed by order dated 05.06.2009 passed in the miscellaneous case. Thereafter the plaintiff-petitioner made a prayer before the court in Miscellaneous Case No. 1 of 2009 questioning its maintainability after the satisfaction of the decree by execution of the sale deed by Pawan Kumar in favour of the plaintiff-petitioner for the suit land. By the impugned order the learned court below has rejected the prayer of the petitioner.

4. Mr. Manish Kumar, learned counsel appearing on behalf of the petitioner submits that after the execution of the sale deed in favour of the petitioner by the defendant no. 1 Pawan Kumar, who was in fact the karta and manager of the



family at the time of execution of the agreement for sale and had executed the agreement for sale in that capacity, the miscellaneous case now can not proceed. It has been contended that the remaining defendant no. 2 Pankaj Kumar, has other remedies open to him including challenging the sale deed executed in favour of the petitioner by the defendant no. 1 Pawan Kumar, but in no case the further proceeding of miscellaneous case under Order 9 Rule 13 C.P.C be allowed to proceed.

5. After considering the submission and perusal of the impugned order, it is manifest that there were two defendants in the suit filed by the plaintiff-petitioner and the ex parte decree was passed against both the defendants. Thereafter the Miscellaneous Case No. 1 of 2009 was filed by both the defendants under Order 9 Rule 13 C.P.C praying for setting aside the said ex parte decree. The fact that the sale deed has been executed by one of the judgment debtors for the suit land in accordance with the decree will not make the prayer for setting aside the ex parte decree under Order 9 Rule 13 infructuous or not maintainable at the instance of the another judgment debtor whose interest in the suit land is not in dispute. Moreover, as found in the impugned order, the sale deed has been executed in

favour of the plaintiff-decree holder when the proceeding of the execution had already been stayed. The learned counsel for both the parties have accepted that both the miscellaneous case as well as the execution case are being heard analogously.

6. In the backdrop of these facts, this Court does not find any illegality or error of jurisdiction committed by the learned court below in passing the impugned order. This application is, accordingly, dismissed with a direction to the learned court below to proceed expeditiously and dispose of the miscellaneous case as early as possible.

(V. Nath, J)

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