

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17501 of 2014

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Arun Kumar @ Arun Kumar Singh

.... Petitioner/s

Versus

Jueshwar Rai & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amrendra Kumar Sinha No.-1

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 25-01-2016

Heard learned counsel Mr. Amrendra Kumar Sinha for
the petitioner on the Interlocutory Application No.7652 of 2015.

At the time of hearing of this interlocutory application
learned counsel for the petitioner submitted that this writ
application itself may be heard on merit in admission matter.
Accordingly, I heard him on merit in admission matter.

Although this application under Article 227 of the
Constitution of India has been filed by the petitioner challenging
the judgment and decree of the court in Title Partition Suit No.536
of 2004. At the time of hearing of this application the learned
counsel for the petitioner confined his prayer with regard to the
order dated 21.06.2014 passed in Execution Case No.09 of 2009
by Subordinate Judge-I, Hajipur whereby the application filed by
the petitioner under Order 21 Rule 97 CPC has been dismissed by
the court below.



It appears that the aforesaid Title Partition Suit No.536 of 2004 was filed by the plaintiff-respondent against the defendant. The suit was decreed and ultimately the plaintiff filed Execution Case No.09 of 2009. In the said execution case delivery of possession was effected and thereafter the present petitioner, who is third party, filed application under Order 21 Rule 97 CPC claiming his right and possession over the suit property. The learned court below by the impugned order after considering the questions raised by the parties and after hearing them held that the petitioner was not in possession of the property and accordingly on adjudication has decided the matter by dismissing the application.

The learned counsel for the petitioner relied upon the decisions of the Hon'ble Supreme Court in the case of **Sameer Singh and Another Vs. Abdul Rab and Others., 2015 (1) P.L.J.R. 64 (SC)** and in the case of **Ashan Devi and Another Vs. Phulwasi Devi and Others, 2004 (1) P.L.J.R. 132 (SC)** and submitted that the executing court has the jurisdiction to decide the question of title and possession of the parties but the court below has rejected the application of the petitioner without giving opportunity to the petitioner to adduce evidence in support of his case.

From perusal of the decisions relied upon by the learned counsel for the petitioner, it appears that those decisions relate to the jurisdiction of the executing court while dealing with an application under Order 21 Rule 97 CPC. The court below in the present case dealt with the application under Order 21 Rule 97 CPC filed by the petitioner and adjudicated the same and finding that the petitioner was not in possession of the property rejected the application. In such circumstances this order passed by the court below amounts to a decree within the meaning of Order 21 Rule 103 CPC. Therefore, this application under Article 227 of the Constitution of India is not maintainable.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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