

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.1466 of 2008

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Braj Kishore Singh, son of Sri Musafir Singh, resident of village- Rampur Noor
Nagar, P.S. Jalalpur, District-Saran at Chapra. Petitioner/s

Versus

1. Raj Kishori Devi wife of late Ram Surat Tiwary
 2. Viveka Nand Tiwary.
 3. Sanjay Tiwary.
 4. Dhananjay Tiwary, all sons of late Ram Surat Tiwary, all 1 to 4 resident of
village-Jalalpur, P.S. Jalalpur, District-Saran. Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. AJAY KUMAR SHARMA

For the Respondent/s : Mr. Mithilesh Kumar Upadhyay

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-02-2016

Heard the learned counsel appearing on behalf of the
petitioner and the learned counsel appearing on behalf of the opposite
parties.

This revision application has been filed against the order
whereby the learned court below has dismissed the Misc. case No. 10
of 2007 praying for restoration of the Execution Case No. 05 of 2000.

The Title Suit No. 124 of 1977/23 of 1981 was filed by
Rameshwar Singh as plaintiff for declaration of his title and
possession over the suit land. The aforesaid suit was decreed and
thereafter the Title Appeal No. 05 of 1983 preferred by the defendants
was dismissed. The Second Appeal No. 43 of 1999 preferred by the
defendants was also dismissed as withdrawn on 04.03.2002.



The decree holder Rameshwar Singh, in the meantime, filed Execution Case No. 05 of 2000 for executing the decree passed in his favour in the suit. In the execution case, a compromise petition was filed by the parties on 15.09.2001. The learned counsel appearing on behalf of the petitioner and the opposite parties in this revision application have accepted the factum of the said compromise and the filing of the petition on 15.09.2001 before the learned executing court below. The compromise petition dated 15.09.2001 has been brought on record of this revision application as Annexure-1. In this petition, the statement in categorical terms was made that the parties to the decree had settled their dispute and had come in possession over the lands according to the settlement. It was also further stated that in view of the compromise there was now no need for pursuing the execution proceeding as the parties had already got possession.

It, however, appears that the execution proceeding continued and ultimately dismissed for non prosecution by order dated 11.09.2004. It further also transpires that the present petitioner, after the death of the original decree holder, had filed a petition praying for his substitution in place of the deceased decree holder but the said petition, though filed on 02.03.2002, was also not pursued and the execution case was dismissed for default on 11.09.2004.

The learned counsel appearing for the judgment debtor

opposite parties has taken a definite stand before the court that the decree holder and the judgment debtor have come in possession of the property allotted to them by way of compromise/settlement and are continuing in possession as such. The learned counsel for the petitioner has expressed his inability to either affirm or deny the said statement. But in any view of the matter, it is apparent from the petition dated 15.09.2001 (Annexure-1) that a prayer was made before the executing court to dispose of the execution proceeding stating that there was no need for delivery of possession in view of the compromise/settlement between the parties. In the impugned order also the learned court below has considered the facts and circumstances of the case as well as the conduct of the decree holder and thereafter the present petitioner in not pursuing the execution proceeding for extraordinary long period.

After careful consideration of the matter including the petition filed before the executing court as evident from Annexure-1 which fact has been accepted by the opposite parties also, this Court does not find that the learned court below has committed any error of jurisdiction or material irregularity in passing the impugned order.

The revision application is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

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