

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.30 of 2016

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Deo Ratan Mahton son of late Tinkoury Mahton, resident of Mohalla
Mohanpur Khalasi, P.O.& P.S. Jamalpur, District Munger.

.... Petitioner/s

Versus

1.Md. Islam son of Late Md. Siddique, resident of Mohalla Mohanpur
Khalasi, P.O. & P.S. Jamalpur, District Munger.

2.Md. Ekram, son of Late Md. Siddique, resident of Mohalla Mohanpur
Khalasi, P.O. & P.S. Jamalpur, District Munger.

3.Ramdeo Mahton, son of Late Tinkoury Mahton, resident of Mohalla
Mohanpur Khalasi, P.O. & P.S. Jamalpur, District Munger.

4.Lal Bahadur mahton son of late Tinkoury Mahton resident of Mohalla
Mohanpur Khalasi, P.O. & P.S. Jamalpur, District Munger.

5.Most. Shanti Devi, wife of Late Mahendra Mahton, Daughter of Late
Tinkoury Mahton, resident of Mohalla Mohanpur Khalasi, P.O. & P.S.
Jamalpur, District Munger.

6.Parwati Devi, w/o Rajendra Prasad, Daughter of late Tinkoury Mahton,
resident of Mohalla Mohanpur Khalasi, P.O. & P.S. Jamalpur, District
Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nagadeo Choubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

2 10-03-2016

I.A. No. 2119 of 2016

Heard learned counsel for the petitioner.

For the reasons stated in the limitation petition (I.A. No.
2119 of 2016), the delay in filing this revision application is
condoned.

Civil Revision No. 30 of 2016

Heard learned counsel for the petitioner both on merits as well as in I.A. No. 2146 of 2016 filed for stay of further proceeding of Misc. Case No. 02 of 2012.

2. This revision application has been filed against the impugned order dated 07.05.2015 passed by the learned executing court below which has turned down the prayer made on behalf of judgment debtor-petitioner under Section 47 C.P.C raising the question of executability of the decree, and dismissed the petition dated 11.02.2016.

3. There is no dispute that a suit for eviction was filed against the present petitioner as defendant with regard to the properties mentioned in the schedule of the plaint. The said suit was decreed and the decree was affirmed in Appeal as well as in Second Appeal and thereafter the decree holder plaintiff has filed the execution case praying for execution of the decree against the present petitioner.

4. The present petitioner filed the petition wherein he came out with the case that after discovery of new materials it had become known to him that the area of the suit property did not entirely belong to the plaintiff-decree holder. It was also his plea that the description of the suit property, therefore, had



become vague and not identifiable. It is also limpid from the impugned order that the submission was also made that the eviction decree under execution was only with regard to the house in Schedule-1 and not with regard to the land over which the said house was standing. The learned executing court below after hearing the parties has rejected the petition holding that the decree under execution is not ambiguous and therefore executable.

5. Learned counsel appearing for the petitioner at the outset has submitted that the petition filed under Section 47 C.P.C by the judgment-debtor has substance in view of the discovery of new facts, which if considered, would disentitle the plaintiff. It has, however, been accepted on behalf of the petitioner that in the decree there is no area of land mentioned but the suit premises has only been described.

6. From the impugned order also, it transpires that the executing court below has taken into notice the property subject matter of execution and thereafter has come to the conclusion that the description is not vague or ambiguous. In view of the aforesaid facts, this court does not find that the learned Court below has committed any error of jurisdiction and material irregularity in rejecting the petition filed under Section 47 C.P.C

by the petitioner. The civil revision application is, accordingly, dismissed.

7. The executing court below is directed to proceed with the execution case in accordance with law.

(V. Nath, J)

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