

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8233 of 2015

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Ajay Kumar Shahi

.... Petitioner/s

Versus

Kashion Nadaf & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

6 25-07-2016

Heard learned counsel Mr. Pankaj Kumar Singh for the petitioner and learned counsel Mr. Najmul Hoda for respondent no.18.

2. It appears that the plaintiff-petitioner filed Title Suit No.44 of 2003 for declaration of title and recovery of possession of the suit property. The suit was decreed and thereafter the present Execution Case No.02 of 2006/09 of 2014 was filed by the plaintiff-petitioner. In this execution case the intervener filed application for being added as party decree-holder on the ground that a portion of the suit property has already been sold by the petitioner measuring 10 decimals and 24 ½ decimals land was sold by Krishna Kumar Shahi in favour of the intervener respondent no.18 by registered sale deed. The court below by the impugned order considering Order 21 Rule 16 of the Code of Civil Procedure added the intervener as decree-holder.



3. According to the learned counsel for the plaintiff-petitioner-decree holder, the question which is being now raised by the intervener-respondent cannot be decided by the executing court. The petitioner is decree-holder and the dispute will be between petitioner and transferee-respondent no.18. Even if the petitioner has transferred 10 decimals of land to the intervener-respondent no.18 then also it will be between the petitioner and the transferee-respondent no.18. In this execution case the Court has to deliver possession to the plaintiff-petitioner. Whether the intervener is entitled to possession of the purchased land from the petitioner that cannot be decided in this execution case.

4. On the other hand, learned counsel Mr. Najmul Hoda appearing on behalf of intervener-respondent submitted that the transfer by plaintiff-petitioner is admitted. The transfer made by Krishna Kumar Shahi is also admitted and in fact the registered sale deeds were produced by the intervener-respondent in the court below and the court below considering this aspect of the matter came to the conclusion that the judgment-debtors are also in possession of some part of land purchased by the intervener. It appears that Pleader Commissioner was also appointed in this case and Pleader Commissioner reported to the effect that the judgment- debtors are also in possession of the portion of the land

purchased by the intervener. Therefore, the learned court below has rightly allowed the application and has rightly made the respondent no.18 as decree-holder party in the suit.

5. It is admitted fact that the intervener is not a party to the suit. It may also be mentioned that the intervener has purchased the land measuring about 24 ½ decimals from Krishna Kumar Shahi by registered sale deed. Krishna Kumar Shahi also is not a party to the suit. The plaintiff-petitioner has filed the suit for declaration of title and recovery of possession. Admittedly the plaintiff's suit has been decreed. Now, therefore, the decree is to be executed in favour of decree-holder. So far Order 21 Rule 16 of the Code of Civil Procedure is concerned, it will not apply in the present case. Decree-holder has not transferred the entire suit property. The only part of the suit property has been transferred. Now, therefore, the intervener has a right to recover possession from the decree-holder. So far the transfer by Krishna Kumar Shahi is concerned, neither he is party nor on the basis of sale deed the intervener ever prayed for being added as party in the suit. Krishna Kumar Shahi is neither a judgment-debtor nor a decree-holder. So far the claim that there had already been partition between Krishna Kumar Shahi and his brother as claimed by the intervener is concerned, this is a disputed question of fact



which cannot be decided in an interlocutory application under Order 1 Rule 10 of the Code of Civil Procedure. If at all the transfer made by Krishna Kumar Shahi in favour of the intervener is valid transfer and if the transfer made by the petitioner is not disputed by the petitioner and it is valid transfer and by that the intervener has acquired any title to the property, he may get his grievance redressed before appropriate forum. If he is admitted as party in this execution case then there may be dispute between decree-holder and decree-holder and the executing court cannot decide this question between decree-holder and decree-holder.

6. Order 21 Rule 16 of the Code of Civil Procedure reads as follows:-

16. Application for execution by transferee of decree.- Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the applications were made by such decree holder:

7. In view of this provision, here, there is no dispute that the decree has been passed only in favour of the petitioner. There has been no partition between the petitioner and his transferee i.e. respondent no.18, herein. The interest of the decree-

holder has not been transferred by the decree-holder rather only a part of the suit property has been transferred. The decree-holder has himself prayed for recovery of possession of the entire property. In such circumstances, the learned court below has wrongly approached the case and has passed the order in the manner not permitted by law. Therefore, the impugned order is set aside and this writ application is allowed.

8. The intervener-respondent no.18 may initiate appropriate proceeding against the petitioner for recovery of possession of his purchased property.

(Mungeshwar Sahoo, J)

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