

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4957 of 2013

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1. Rakesh Kumar Son Of Sri Sudama Pathak Resident Of Village : - Chota Telpa, P.O. : - Chapra, P.S. : - Chapra Town, District - Saran
 2. Ashok Kumar Pathak Son Of Sri Sudama Pathak Resident Of Village : - Chota Telpa, P.O. : - Chapra, P.S. : - Chapra Town, District - Saran
 3. Ranjit Kumar Son Of Sri Sudama Pathak Resident Of Village : - Chota Telpa, P.O. : - Chapra, P.S. : - Chapra Town, District - Saran
 4. Vindyawashini Devi Wife Of Sri Akhilesh Tiwari, Daughter Of Sri Sudama Pathak Resident Of Village : - Chota Telpa, P.O. : - Chapra, P.S. : - Chapra Town, District - Saran, At Present Resident Of Village : - Ami, P.O. : - Ami, P.S. : - Dighwara, District - Saran

.... Petitioner/s

Versus

1. Ashok Sharma Son Of Sri Ram Awtar Sharma Resident Of Village : - Chota Telpa, P.O. : - Chapra, P.S. : - Chapra Town, District - Saran
2. Bibi Kuresha Wife Of Late Zamir Hassan Resident Of Village : - Marar Bazar, P.O. : Marar Bazar, P.S. : - Parsa, District - Saran
3. Zulfkar @ Zulfikar Ahmad Son Of Late Zamir Hassan Resident Of Village : - Marar Bazar, P.O. : Marar Bazar, P.S. : - Parsa, District - Saran
4. Faruque Son Of Late Zamir Hassan Resident Of Village : - Marar Bazar, P.O. : Marar Bazar, P.S. : - Parsa, District - Saran
5. Shakil Ahmad Son Of Late Zamir Hassan Resident Of Village : - Marar Bazar, P.O. : Marar Bazar, P.S. : - Parsa, District - Saran
6. Akhtari Begum Wife Of Rais Ansari Resident Of Village : - Marar Bazar, P.O. : Marar Bazar, P.S. : - Parsa, District - Saran
7. Roshan Ara Wife Of Zahir Ansari, Daughter Of Late Zamir Hassan Resident Of Mohalla : - Karim Chak, P.O. : - Chapra, P.S. : - Chapra Town, District - Saran
8. Bebi @ Roshan Ara At Present Resident Of Village - Chota Telpa, P.O. - Chapra, P.S. : - Chapra Town, District - Saran
9. Imteyaz Son Of Late Zamir Hassan At Present Resident Of Village - Chota Telpa, P.O. - Chapra, P.S. : - Chapra Town, District - Saran

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Sr. Adv.
 Mr. Ved Prakash Srivastava, Advocate

For the Respondent/s : Mr. Nagendra Rai, Advocate
 Mr. Navin Nikunj, Advocate
 Mr. Shambhu Sharan Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 09-03-2016 Heard learned counsel for the petitioner as well as
 learned counsel for the respondents.



2. Petitioner is aggrieved by an order dated 15.01.2013 passed by Sub-Judge- 4th, Civil Courts, Saran at Chapra in connection with Miscellaneous Case No. 18/2012 which has been initiated at the end of petitioner/judgment debtor in connection with Execution Case No. 01/2011 whereby and whereunder objections raised on behalf of petitioner have been rejected.

3. With regard to limitation, learned counsel for the petitioner does not insist. However, on other aspect, relating to defect persisting over proceeding of Execution No.01/2011, it has been submitted that Schedule-1 of the plaint which deals with the land under dispute properly identifiable by a boundary discloses North-Kapildeo Sah, South-Self, East-Bishwanath Singh, West-Mustary and then road covering an area of 2 Kattha out of 9 Kattha 19 Dhur located at eastern southern flank of Survey Plot No.64, Khata No. 26 having rooms and verandah, the land so identified by the aforesaid boundary under *Mahadanama*, is found properly identifiable by the learned lower court under its judgment dated 20.07.1989, decree dated 03.08.1989, judgment of First Appeal dated 25.06.2010 under First Appeal No. 760/1989.

4. When the Execution Case has been filed, its boundary has been changed at northern side as North-Kapildeo Sah, present decree holder. So submitted that without having any



explanation as well as amendment in the decree, the aforesaid eventualities would not have been allowed which, the learned lower court has completely overlooked during course of considering the objection raised by the petitioner on that score.

5. Learned counsel for the respondents submitted that mere incorporating the fact as, at present decree holder is not going to change the substratum because of the fact that there happens to be specific disclosure that 2 Kattha out of 9 Kattha 19 Dhur lies at eastern southern flank of the land is wrong and illegal.

6. There should not be confusion while executing the decree, more particularly, dealing with the execution relating to Specific Performance of Contract Act whereunder, in case the judgment debtor disaccord the finding of the successive court, then in that event, the court through its process will execute the sale deed in favour of decree holder and that sale-deed, certainly will relate to the property against which the judgment as well as decree has been made.

7. That being so, the steps taken by the respondent/decreed holder in having some sort of discrepancy over northern boundary of the disputed land cannot be recognized unless and until for that, there happens to be some sort of legal explanation.

8. The learned counsel of the respondent submitted that true it is, when the execution proceeding has been drawn up during course thereof, there happens to be discrepancy over northern boundary.

9. After going through the order impugned, it is evident that the learned lower court failed to appreciate the inconsistency and on account thereof, the order impugned is set aside. Petition is allowed.

10. However, in the interest of justice, it is directed that learned lower court will give an opportunity to the respondent/deGREE holder to correct the boundary in terms of decree, if he so desires, failing which the controversy will meet with its ultimate result.

(Aditya Kumar Trivedi, J)

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