

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13431 of 2014

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1. Md. Aftab Alam son of Late Abdul Razzaque Resident of Mohalla- Afzalpur,
P.S.- Pirbahore, District- Patna.

.... Petitioner/s

Versus

1. Khurshida Khanam wife of Late Md. Ataul Haque
2. Md. Waris Imam
3. Md. Naqui Imam
4. Md. Taqui Imam sons of Late md. Ataul Haque
5. Talat Kulsum
6. Aziz Fatma Both daughter of Late Md. Ataul Haque All resident of Kedar
Apartment, Flat No. G II, Kunkun Singh Lane, Police Station- Pirbahore, District-
Patna
7. Islam Mian son of Late Janab Mian Resident of Sharif Colony Bari Path, Police
Station- Pirbahore, District- Patna
8. Md. Muslim son of Late Janab Mian c/o Hakim Saleh Bari Path, Police Station-
Pirbahore, District- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rashid Rais, Adv
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-09-2016

Heard learned counsel for the petitioner.

The applicant in the petition under Order 21 Rule 97 of
the Code of Civil Procedure filed in the execution case is the
petitioner in this application under Article 227 of the Constitution of



India assailing the order of the court whereby the court has turned down the prayer of the petitioner to issue notice to the Opposite Party Nos. 7 and 8 who were judgment-debtors in the execution case.

From the averments made in the application as well as from the submissions, the fact is not in dispute that the present petitioner filed objection resisting the execution of the decree on the basis of independent claim of title and possession over the suit property. The miscellaneous case was accordingly instituted by the executing court for judicial exploration of the claim made by the petitioner. However, at the later stage of the proceeding, the petitioner filed a petition before the court insisting upon to issue notice of the proceeding upon respondent nos. 7 and 8 who were judgment-debtors. By the impugned order the learned court below has rejected the prayer.

The provisions of Order 21 Rule 97 to Rule 106 are complete code in themselves. The purpose is only to shorten the multiplicity of litigation providing for inquiry into the claim by a stranger to the decree by the executing court itself. The order passed in such proceeding either under Order 21 Rule 98 or Rule 100 are deemed to be decree on the strength of the legal fiction created by Rule 102 C.P.C. It is, therefore, evincible that the judgment-debtor



of a decree under execution has apparently no concern at all with the proceeding initiated under the provisions of Order 21 Rule 97 or 99. This purpose and the tenor is also apparent from Rule 103 of Order 21 C.P.C providing that where any application has been adjudicated upon under rule 98 or Rule 100, the order made thereupon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

In this view of the matter, the order passed by the learned court below refusing to issue notice upon the judgment-debtors who were impleaded as Opposite Party Nos. 7 and 8 cannot be faulted with as such judgment-debtors are neither necessary party nor proper party to the said proceeding. Learned counsel for the petitioner has strenuously submitted that as the Opposite Party Nos. 7 and 8(judgment-debtors) have been made parties in the proceeding, the learned court below ought to have issued notice upon them.

From the facts and circumstances of the case, it cannot be ruled out that the present petitioner may be fighting a proxy litigation on behalf of the judgment-debtors and as such they are insisting upon the court to issue notice upon the judgment debtors- Opposite Party Nos. 7 and 8. The wholesome purpose for which the provisions under Order 21 Rule 97 upto Rule 106 of the C.P.C have



been introduced cannot be permitted to be misused or abused by an unscrupulous litigant.

The application is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

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CAV DATE	
Uploading Date	
Transmission Date	

