

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2022 of 2016

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Surendra Baheliya

.... Petitioner/s

Versus

Rita Devi & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Rai

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 29-08-2016 Heard learned counsel, Mr. Arun Kumar Rai,

appearing for the petitioner and learned counsel, Mr. Rajni
Kumari, appearing for the respondent Nos. 1 and 2.

2. Perused the impugned order dated 06.01.2016 passed
by the learned Sub-Judge-II, Saran at Chapra in Miscellaneous
Case No. 22 of 2013 arising out of Execution Case No. 03 of
2013.

3. It appears that Partition Suit No. 209 of 1994 was
filed by the present petitioner for partition. The suit has been
decreed up to the second appellate court and thereafter execution
case has been filed by the plaintiff being Execution Case No. 03 of
2013. In this execution case, an application under Order 21 Rule
97 was filed by the respondent No.1 before the court below, which
was registered as Miscellaneous Case No. 22 of 2013. According
to the respondents, they have purchased the property in the year



2007 from Imdad Ali Khan, who had purchased the land in the year 2004 from defendant No.3, who is a judgment debtor in the suit. In that miscellaneous case, the present decree holder-petitioner filed application for dismissal of the miscellaneous case on the ground that it is not maintainable as the respondents are purchaser and, therefore, their application is barred under order 21 Rule 102 C.P.C. By the impugned order, the court below has rejected the application filed by the petitioner.

4. Order 21 Rule 102 C.P.C. reads as follows;

*“102. **Rules not applicable to transferee pendente lite.**—Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.”*

5. Admittedly, respondent No. 1 and the vendor of respondent No.1 are the purchaser of the suit property during the pendency of the partition suit of the year 1994. The vendor of the respondent contested the suit, which was decreed by the lower appellate court and confirmed by the High Court in second appeal.

In such circumstances, in view of the Order 21 Rule 102 C.P.C., the application filed by the respondents is not maintainable but the learned court below has wrongly refused to reject the application filed by the petitioner.

6. In such circumstances, in my opinion, the court below has not considered the provision of law properly and, thereby, has refused to exercise jurisdiction vested in it by law. If the proceeding of miscellaneous case filed by the respondent allowed to stand, then it will cause prejudice to the decree holder-petitioner. Thus, the order impugned is set aside and it is held that Miscellaneous Case No. 22 of 2013, is hereby, dismissed as not maintainable being barred under Order 21 Rule 102 C.P.C.

7. Accordingly, this writ application stands allowed.

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(Mungeshwar Sahoo, J)