

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6351 of 2016

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Smt. Daymanti Devi & Ors

.... Petitioner/s

Versus

Bhushan Prasad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rabindra Prasad Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

4 13-07-2016

Heard learned counsel Mr. Nawal Kishore Singh for the petitioners and learned counsel Mr. Suman Kumar for the respondent.

It appears that partition suit was filed wherein these petitioners were also defendants. The partition suit was decreed preliminarily granting admitted share to the petitioners. Ultimately final decree was also passed wherein according to the share of the petitioners, lands were allotted. Against the final decree title appeal was filed but it was dismissed by the lower appellate court.

For executing the final decree execution cases were filed. One execution case i.e. Execution Case No.02 of 2013 was filed by Shyama Devi, who was also one of the defendants. The court below delivered possession to the decree-holders according to shares and lands allotted in the final decree. So far the lands of

the present petitioners are concerned, they filed application for effecting delivery of possession but the court below directed the petitioners to file separate execution case.

It may be mentioned here that there is no bar in the Code of Civil Procedure that for effecting delivery of possession execution case may be filed by only one decree-holder as in the partition suit each one is plaintiff and vice versa. There is no provision also in the Code of Civil Procedure that for executing one decree successive execution cases are to be filed by different persons. In this matter reference may be made to a Division Bench decision of this Court, 1976 B.B.C.J. 300. Now, therefore, when there is no provision in the Code of Civil Procedure that successive execution case should be filed, there is no question of filing successive execution case arises. Moreover, there is no bar to proceed in one execution case for effecting delivery of possession.

In my opinion, the court below has directed the petitioners to do a thing which is not provided in the Code of Civil Procedure. Therefore, the order passed by the court below is in the manner not permitted by law. Thus, the impugned order passed by the court below is hereby set aside. The court below is directed to

dispose of the application filed by the petitioners in the execution case itself.

With this direction, this writ application is allowed.

(Mungeshwar Sahoo, J)

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