

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.792 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- SITAMARHI

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Md. Mahmood Alam Son of Late Sheikh Md. Zakriya @ Zakir Hussain, resident of village- Barharba, P.S.- Dumra, District- Sitamarhi Petitioner

Versus

1. The State of Bihar through the Collector, Sitamarhi
2. The Collector, Sitamarhi.
3. Abda Khatoon @ Guria, wife of Md. Azmal Hussain and daughter of Late Md. Badruddin, resident of village Giddha Phulwariya, P.S. Runni Saidpur, District- Sitamarhi.
4. Md. Azmal Hussain, son of Md. Mahmood Alam, resident of village- Barharba, P.S.- Dumra, District- Sitamarhi.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. V.R.P. Singh, Advocate.
For the State : Mr. Kumar Ranjit Ranjan, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date: 01-12-2016

This application under Section 482 of the Cr.P.C has been filed seeking quashing of the order dated 20.08.2014 passed in Execution Case No. 2 of 2007 by the learned Principal Judge, Family Court, Sitamarhi whereby he has rejected the application dated 20.01.2014 filed on behalf of the petitioner seeking an order for restraining auction sale of the land of the petitioner, in execution of order dated 31.03.2007 passed by the learned Principal Judge, Family Court, Sitamarhi in Misc. Case No. 40 of 2003.

The petitioner is father of the Opposite Party no. 4. Opposite Party No. 4 is the husband of Opposite Party No. 3. Opposite Party



No. 3 had filed Misc. Case No. 40 of 2003 against her husband Opposite Party No. 4 for allowance of maintenance at the rate of Rs. 5000/- per month. Finally learned Principal Judge, Family Court, Sitamarhi by an order dated 31.03.2007 ordered for payment of a sum of Rs. 4000/- per month to the Opposite Party No. 3 by the Opposite Party No. 4 by way of maintenance allowance from the date of recording of the order. The Opposite Party did not pay the interim maintenance directed by the Court which made the Opposite Party No. 3 file Execution Case No. 02 of 2007 before the Principal Judge, Family Court, Sitamarhi seeking an order for auction sale of the property of Opposite Party No. 4. Finally the Principal Judge, Family Court, Sitamarhi passed an order dated 19.12.2013 in the said Execution Case No. 02 of 2007 asking the Collector, Sitamarhi for taking steps for auction sale of the aforementioned land. After having learnt this fact, the petitioner, who is the father of the Opposite Party No. 4, claimed that the said land was transferred by Opposite Party No. 4 to the petitioner through a sale deed executed on 09.09.2003 on payment of consideration money. He accordingly, filed an application before the Court of learned Principal Judge, Family Court, Sitamarhi seeking stay of further proceeding of the auction sale of the land in question. In the said petition, the petitioner specifically mentioned that Opposite Party No. 3 had filed the said miscellaneous case bearing Misc. Case No. 40 of 2003 on



22.08.2003. This is to be noticed that the alleged sale deed is said to have been executed on 09.09.2003. Considering the fact that it was a sham transaction between the father and the son as the sale deed was got registered without payment of consideration money, the Court below has rejected the application of the petitioner by the impugned order on two grounds.

Firstly, the petitioner did not have any *locus standi* and the application for stay was filed for the purpose of delaying the process of execution. Learned Principal Judge, Family Court, Sitamarhi has recorded that the sale deed was apparently sham document on the basis of which the petitioner could not derive any interest.

Learned counsel appearing on behalf of the respondents assailing the order dated 20.08.2014 has submitted that there is an error of record in the said order that miscellaneous case was filed on 20.08.2003 i.e. before execution of sale deed on 09.09.2003. According to him, the said application was filed on 12.09.2003, after execution of the sale deed.

I have perused the application filed by the petitioner before the Court of learned Principal Judge, Family Court, Sitamarhi from which it is evident that the petitioner had mentioned that the said application No. 40 of 2003 was filed on 22.08.2003. In such circumstances, what has been recorded by the court below in the impugned order cannot be said to be an error of record since he has



mentioned simply what had been mentioned in the application, which he was dealing with.

Considering the entire facts and circumstances of the case, it is evident that the petitioner's son had admittedly not paid the maintenance amount to the Opposite Party No. 3 as was held to be payable by a Court of competent jurisdiction. For execution of the order for payment of maintenance amount, the wife thus filed application for auction sale of the land in question. There is no reason mentioned as to why the Opposite Party N. 3 got the land transferred in favour of the petitioner hurriedly, that too in the name of his father.

In the background of the facts, I do not find it to be a fit case for exercise of inherent jurisdiction of this Court under Section 482 of the Cr.P.C.

I find no merit, this application is accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	9.12.2016
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