

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12532 of 2014

Prabha Devi, Wife of Sri Lakshaman Sah, Resident of Mohalla - Kashipur, Ward No. 11 (New - 3) Under Town Samastipur, P.S. + District - Samastipur

.... Petitioner

Versus

1. Vijay Sah, Son of Late Bhagwan Sah
2. Ashok Sah, Son of Late Bhagwan Sah
3. Laxman Sah, Son of Late Bhagwan Sah
4. Durga Sah, Son of Late Bhagwan Sah
5. Raja Sah, Son of Late Bhagwan Sah, 1 to 5 are resident of Mohalla - Kashipur, Ward No. 11 (New-3), under Town Samastipur, P.S. and District - Samastipur
6. Sita Ram Rai, Son of Bodhan Gope, Resident of Village - Chakai, P.O. Dadpur, P.S. Bhagwanpur, District - Begusarai
7. Meena Kumari, wife of Dilip Kumar Sah, Resident of Mohalla - Pandasari, P.O. and P.S. Laheriasari, District - Samastipur
8. Dharmsheela Devi, Wife of Vijay Kumar Gupta, Resident of Mohalla - Runnapatti, District - Darbhanga
9. Poonam Devi, Wife of Pramod Kumar Sah, Resident of Village - Dudhpura, P.O. and District - Samastipur

.... Respondents

Appearance :

For the Petitioner : Mr. Anirudh Kumar Sinha, Advocate

For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-09-2016

Heard learned counsel for the petitioner.

By the impugned order the learned court below has turned down the prayer of the petitioner to be impleaded as party in the execution proceeding and also rejected the prayer made on behalf of the petitioner for stay of further proceeding of the execution proceeding.

The factual exposes' are that a suit for partition was filed and preliminary decree was passed in the said suit on 23.12.2005. After passing of the preliminary decree, the petitioner,



admittedly, purchased the part of the suit property from one of the co-sharers on 19.02.2008. The final decree in the said partition suit was passed on 21.09.2010. It is not in dispute that the petitioner did not take any step for her impleadment in the final decree proceeding. The Partition Execution Case No. 01 of 2012 has been filed for execution of the final decree proceeding and in the said proceeding the petitioner filed the petition under Order 1, Rule 10 of the Code of Civil Procedure praying to be impleaded as party on the basis of the purchase made by her and also prayed for stay of the further proceeding of the execution case. The learned court below by the impugned order has rejected the prayer of the petitioner and observed that the petitioner may file independent suit for redressal of her grievances.

After considering the submissions and the materials on record, this Court does not find that any error of jurisdiction or illegality has been committed by the learned court below in rejecting the petition and prayer as made on behalf of the petitioner. It is well settled principle that the executing court cannot go beyond that decree. The impleadment of the petitioner and prayer for stay of further proceeding are definitely beyond the jurisdiction of the executing court which has rightly observed that the petitioner may seek the redressal of her grievances in accordance with law by filing

independent suit. It is also condign to notice here that according to the learned counsel for the petitioner a suit has already been filed by the petitioner.

In the backdrop of aforesaid facts, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The petition is, accordingly, dismissed.

(V. Nath, J.)

Kundan

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