

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17670 of 2015

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Lallan Singh

.... Petitioner/s

Versus

Dr. Ram Raman & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 19-05-2016

Heard the learned counsel, Mr. Rajendra Prasad Singh for the petitioner and the learned counsel, Mr. Shanti Kumar for the respondent No.1.

Perused the order passed by the Court below. It appears that the Court below disposed of three applications. One application filed by the respondent No.1 for expeditious hearing and disposal of the execution case. The other application is filed by the petitioner for disposal of the execution case as not maintainable on the ground that the same has been filed on the basis of a forged power of attorney.

The learned Court below found that the respondent No.1 is the husband of the decree holder namely Dr. Shobha Raman and now, the husband, who is respondent No.1, is prosecuting the execution case. The Court below also held that there is no provision for objection except Section 47 of the C.P.C.



The learned counsel, Mr. Rajendra Prasad Singh for the petitioner submitted that there is a provision in C.P.C. for deciding an objection after show cause as provided in Order 21 Rule 22 and 23 C.P.C. According to the learned counsel, when the objection was raised regarding the forgery or forged power of attorney, the Court should have decided the same.

On the other hand, the learned counsel, Mr. Shanti Kumar for the respondents submitted that admittedly, the decree holder is the wife of the respondent No.1 and respondent No.1 is prosecuting the execution case for executing the decree. In such circumstances, the learned Court below has rightly held that the question whether it is forged power of attorney or not it is not necessary to be decided in this execution case and the decree is to be executed, as it is, particularly when the respondent No.1 is the husband of the decree holder.

The decree holder has died and the husband is proceeding with the execution case. Therefore, it cannot be said that the husband has no right or the execution case is not executable. It appears that the application has been filed only to delay the execution case.

It appears that this is nothing but a frivolous writ application filed against the order passed by the Court below and,

therefore, in my opinion, the petitioner is liable to pay cost.

Accordingly, I dismissed this writ application with cost of Rs.10,000 to be paid by the petitioner to the plaintiff-respondent No.1 within one month from today and if it is not paid to the plaintiff-respondent No.1 within the aforesaid period, the said amount of cost should be realized through the process of the Court and/or in the execution case itself.

(Mungeshwar Sahoo, J)

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