

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3475 of 2016

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Tehmina Imam @ Tehmina Imam Punvani, D/o Late Syed Akbar Imam R/o 3rd Floor, Getanjali Enclave New Delhi.

.... Petitioner.

Versus

1. The State of Bihar.
2. The District Magistrate, Patna having its office at Collectorate, Patna.
3. Syed Askari Hadi Ali Augustine Imam @ Tooto Imam, S/o Late Syed Hassan Imam, R/o Kheliyan, Village- Kesura, P.S.- Hazaribagh, Mufassil , Distt- Hazaribagh (JHARKHAND).
4. Syed Hassan Francis Imam, D/o Syed Askari Hadi Ali Augustine Imam @ Tooto Imam,
5. Miss Nattie Sahbat Imam D/o Syed Askari Hadi Ali Augustine Imam @ Tooto Imam, Both R/o Kheliyan, Village- Kesura, P.S.- Hazaribagh, Mufassil , Distt- Hazaribagh (JHARKHAND).

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Shashank Shekhar Jha

For the Respondent/s : Mr. ASHOK PRIYADARSHI- GA4

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-04-2016

V.Nath, J.

Heard Mr. Jha, learned counsel appearing on

behalf of the petitioner and Mr.S.S.Dwivedi, learned senior counsel appearing for the respondent nos.3 to 5.

Though the matter has been placed today for considering the I.A.No.1717/2016 filed on behalf of the petitioner praying for stay of the further proceeding of the Execution Case No.07/12 of 2006 pending before Sub Judge I, Hazaribagh but with the consent of the learned counsel for the parties the present application has also been heard on merits and is being disposed of as

hereinafter by this order.

The fact as apparent and not in dispute is that a Title Suit No.176/1986 was filed by the plaintiff in which the present petitioner was admittedly not a party at the time of final disposal of that suit. The said suit was decreed and the execution case no.07/12 of 2006 has been filed by the plaintiff-decree holder for execution of the decree passed in T.S.No.176/1986. The present petitioner filed an application under Order 21 Rule 97 C.P.C. in the execution proceeding claiming her own independent right, title and interest over the property subject matter of the decree under execution and resisted the execution of the said decree on that basis. However, by order dated 05.12.2015 the said application under Order 21 Rule 97 C.P.C. filed by the petitioner was dismissed. The petitioner thereafter filed a review application for review of the said order but the same has also been dismissed by order dated 11.01.2016. The present application has been filed assailing the part of the order dated 11.01.2016 i.e. paragraph-4 of the said order.

Mr.Jha, learned counsel for the petitioner, has submitted by referring to Annexure-12 of the writ application that the petitioner has been substituted in place of the petitioner of CWJC No.20042/2011 which was also filed against the similar order passed on the petition of the petitioner of the said writ application rejecting



his application under Order 21 Rule 97 C.P.C. It has also been pointed out by the learned counsel for the petitioner that though the prayer by way of supplementary affidavit filed by the present petitioner in the said writ application did not find favour with the court but the observation was made that the aggrieved party had separate cause and remedy by taking appropriate steps in accordance with law. The learned counsel, however, has submitted that the petitioner's status in CWJC No.20042/2011 was by way of representative/substituted heir of the petitioner of that application whereas the present application i.e. CWJC No.3475/2016 has been filed in her individual capacity for her own independent right. The learned counsel, at this juncture, has also accepted that the challenge in the present application is pointedly confined to the direction as contained in para-4 of the order dated 11.01.2016 pertaining to delivery of possession and the rejection of the petition under Order 21 Rule 97 C.P.C. by order dated 05.12.2015 has not been challenged by the petitioner in accordance with law by filing appeal.

Mr.Dwivedi, learned senior counsel appearing on behalf of the respondent nos. 3 to 5, at the outset, has raised a preliminary objection regarding the maintainability of the present application and has also made submissions that the present application filed by the petitioner has got no merit as the petitioner has alternative

and efficacious remedy in accordance with law.

After considering the submissions and the facts of the present case, it is manifest that in the execution case filed for execution of the decree passed in Title Suit No.176/1986, the present petitioner had filed a petition under Order 21 Rule 97 C.P.C. which was dismissed by order dated 05.12.2015. The petition for review of the said order has also been dismissed by order dated 11.01.2016 by the executing court below. It has not been disputed on behalf of the petitioner that no appeal or any other proceeding has been taken by the petitioner assailing the order dated 05.12.2015 which has the force of a decree by virtue of the provision of Order 21 Rule 103 C.P.C. Further in view of the fact that the order passed by the executing court below dismissing the review application also has not been challenged by the petitioner in its entirety as per the submission on behalf of the petitioner, this Court finds that there is no scope for interfering with the impugned order or granting the relief as prayed by the petitioner in the present application by invoking the jurisdiction under Article 227 of the Constitution of India.

In result, the present application is dismissed having no merits. However, the petitioner shall be at liberty to pursue the remedy available to the petitioner in accordance with law against the order dismissing her petition under Order 21 Rule 97 C.P.C by the

executing court below.

(V. Nath, J)

Nitesh/-

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