

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.116 of 2017

=====

1. Lal Bihari Chamar, S/o Late Gudar Chamar,
2. Shyam Bihari Chamar, S/o Late Gudar Chamar,
3. Shambhu Chamar, Son of Late Gudar Chamar,
4. Most. Tetari Devi, Wife of Late Gudar Chamar, All Resident of village -
Hargaon, P.S. Chainpur, District - Kaimur at Bhabua

.... Appellant/s

Versus

1. The State of Bihar, through the Collector, District Kaimur (Bhabua)
2. Kishori Sah, Son of Late Sheo Nath Sah,
3. Hazari Sah, Son of Late Sheo Nath Sah,
4. Surendra Bahadur Singh, S/o Shyam Sundar Singh,
5. Amber Raj, Son of Shri Surendra Bahadur Singh, All resident of village
- Badhauna, P.O. Badhauna, P.S. Chainpur, District - Kaimur

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ramchandra Singh, Adv

For the Respondent/s : Mr. Raj Kishore Roy- GP18

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 03-02-2017

Heard learned counsel for the petitioners.

Perused the impugned order dated 06.12.2016 passed
by the Sub-Judge-IV, Kaimur at Bhabhua in Execution Case No.
02 of 2010 registration no. 2293 of 2014, whereby the learned
Sub-Judge has allowed the application filed by the decree holder
and directed to take action for delivery of possession to the decree
holder.

Learned counsel for the petitioners has submitted that
the petitioners are the real owner of the suit property but the
decree holder obtained the decree with respect to the suit property



without making the present petitioners as party defendant in the suit. The present petitioners filed second appeal before the High Court. The High Court rejected the application filed by the petitioners for being added as party and also dismissed the second appeal on the ground that the petitioners are not party to the suit. The petitioners thereafter filed special leave to appeal before the Supreme Court and the Supreme Court permitted the petitioners to move the Civil Court and dismissed the special leave of the petitioners. Accordingly, the petitioners have filed a title suit for declaration of title and for declaration that the decree obtained by the respondents in the suit is fraudulent and a void decree will not be binding upon the petitioners. During the pendency of the suit, an injunction application was filed by the petitioners which was disposed of. Thereafter the executing court in the execution case has directed the decree holder to take action for taking delivery of possession. According to the learned counsel for the petitioner if during the pendency of the suit the petitioners will be thrown out of the suit premises they shall suffer serious loss and irreparable injury.

It may be mentioned here that the right of the petitioners is yet to be decided in the suit filed by the petitioners whereas the decree holders have obtained the decree in their



favour and now therefore, only on the ground that the suit is pending, filed by a person who is not a party to the suit, the further proceeding in execution case cannot be stayed. The court below therefore, has held that Order 21 Rule 29 C.P.C is not applicable and has rejected the petition filed by the petitioners.

In view of the above facts and circumstances of the case in my opinion there is no jurisdictional error committed by the court below. This civil revision application is, accordingly, dismissed.

(Mungeshwar Sahoo, J)

Ranjan/-
U

