

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1409 of 2017

Ravi Shankar Singh, Son of Shri Krishna Singh, C/o Lakhan Tea Shop, Dr. Rajendra Prasad Road, Khalifa Bagh, P.S. - Kotwali, Distt. Bhagalpur.

... .. Appellant

Versus

Smt. Shobha Prasad, wife of Dr. Bijoy Prasad, Resident of Aliganj, P.O. - Mirjanhat, P.S. Mojahidpur, Distt. - Bhagalpur.

... .. Respondent

Appearance :

For the Appellant	:	Mr. Rajendra Prasad, Senior Advocate
		Mr. Deepak Kumar, Advocate
For the Respondent	:	Mr. Ajay Kumar Singh

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date : 25-08-2017

Heard Mr. Rajendra Prasad, learned Senior Counsel, appearing on behalf of the petitioner and Mr. Ajay Kumar Singh, learned Counsel, representing the respondent.

2. The petitioner is aggrieved by an order, dated 09.06.2017, passed by learned Munsif II (Sadar), Bhagalpur, in Title Execution Case No. 14 of 2013, whereby he has rejected an application filed on behalf of the petitioner under Order 21 Rule 29 of the C.P.C. for stay of the execution proceeding.

3. Briefly narrated, facts of the case, resulting into filing of the present application, are that the petitioner claims to be tenant of one Anil Jiloka. It is his further case that there was an



oral agreement for sale of the suit premises (shop) for consideration of a sum of Rs. 33,000/-, out of which he had paid a sum of Rs. 10,000/-. Said Anil Jiloka, however, transferred the said shop in the name of the respondent by executing a registered deed of sale. The respondent filed an eviction suit, giving rise to Title Eviction Suit No. 10 of 1998, which came to be decreed in her favour by judgment and order, dated 26.06.2013. The respondent, thereafter, filed an execution case, being Title Execution Case No. 14 of 2013, for executing the said decree, dated 26.06.2013.

4. The petitioner, on the other hand, filed a suit for specific performance of contract, being Title Suit No. 216 of 1997, impleading the vendor, Anil Jiloka, and the respondent, as defendants. The said suit is pending. It is informed at the bar that the suit is at the stage of argument.

5. The petitioner, in that background, filed a petition, under Order 21 Rule 29 of the C.P.C., before learned Munsif II (Sadar), Bhagalpur, on 01.02.2014 and 21.02.2014, for staying the execution proceeding till final disposal of Title Suit No. 216 of 1997, in the interest of justice.

6. The said application has been rejected, by the impugned judgment and order, on the ground that the application, under



Order 21 Rule 29 of the C.P.C., was not maintainable in view of the Supreme Court's decision, in the case of **Shaukat Hussain @ Ali Akram and Others v. Smt. Bhuneshwari Devi (dead) by L.rs. And Others**, reported in (1972) 2 SCC 731, and decisions of this Court, in the cases of **Ram Nath Sah v. Kali Prasad Singh (AIR 1999 Patna 48)** and **Gajendra Prasad Sinha and Another v. Man Mohan Prasad Sinha**, reported in 2000 (1) PLJR 219.

7. Learned Senior Counsel appearing on behalf of the petitioner, while assailing the impugned order, has submitted that learned Court below has wrongly rejected the petitioner's application, under Order 21 Rule 29 of the C.P.C., as not maintainable by misreading the Supreme Court's decision and the decisions of this Court, referred to in the impugned order.

8. Learned Counsel appearing on behalf of the respondent has, however, placed heavy reliance on the Supreme Court's decision, in the case of **Shaukat Hussain @ Ali Akram** (supra) and this Court's decision, in the cases of **Ram Nath Sah** (supra) and **Gajendra Prasad Sinha** (supra), to contend that provisions of Order 21 Rule 29 of the C.P.C. could not be applied for the relief, which the petitioner had sought before the learned Court below. He has submitted that order, under Order 21 Rule 29 of the C.P.C., could be applied only if the suit and the execution case, both, were



pending in the same court. He has further submitted, referring to the decision, in the case of **Gajendra Prasad Sinha** (supra), that unless the suit of specific performance of contract was decreed and the sale in pursuance of the same was executed, the petitioner could not claim any interest in the land, in question.

9. I have perused the impugned judgment and order and have considered the rival submissions made on behalf of the parties. I have taken note of the decisions of the Supreme Court and this Court, which have been referred to by the learned Court below and also relied on by learned Counsel for the respondent. I find substance in the submissions made on behalf of the respondent that said application, under Order 21 Rule 29 of the C.P.C., could not have been entertained by the learned Court below in view of the enunciation of law in the case of **Shaukat Hussain @ Ali Akram** (supra), paragraph 7 of which reads thus:-

“7. It is obvious from a mere perusal of the rule that there should be simultaneously two proceedings in one court. One is the proceeding in execution at the instance of the decree-holder against the judgment-debtor and the other a suit at the instance of the judgment-debtor against the decree-holder. That is a condition under which the court in which the suit is pending may stay the execution before it. If that was the only condition, Mr. Chagla would be right in his



contention, because admittedly there was a proceeding in execution by the decree-holder against the judgment-debtor in the court of Munsif 1st Gaya and there was also a suit at the instance of the judgment-debtor against the decree-holder in that court. But there is a snag in that rule. It is not enough that there is a suit pending by the judgment-debtor, it is further necessary that the suit must be against the holder of a decree of such court. The words "such court" are important. "Such court" means in the context of that rule the court in which the suit is pending. In other words, the suit must be one not only pending in that court but also one against the holder of a decree of that court. That appears to be the plain meaning of the rule."

10. Similar view has been taken by this Court in the case of **Ram Nath Sah** (supra), wherein the Court has held in clear terms that if the provisions of Order 21 Rule 29 of the C.P.C. be applied, there should be two proceedings in one court, i.e., execution proceeding at the instance of the decree-holder and the other suit at the instance of the judgment-debtor against the decree-holder.

11. The observation made by this Court, in the case of **Gajendra Prasad Sinha** (supra), completely demolishes the case of the petitioner, wherein the Court has held that unless the suit of



specific performance of act is decreed and the sale in pursuance of the same is executed, the judgment-debtor could not be said to be having any interest in the land.

12. In view of the above, I do not find any illegality in the impugned judgment and order. This application is, accordingly, dismissed as meritless.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
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