

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.392 of 2016

In
Civil Writ Jurisdiction Case No. 4408 of 2016

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Rama Shankar Prasad & Ors		Petitioner/s
	Versus	
Nagendra Singh & Ors		Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lilawati Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

10 03-08-2017 Heard the learned counsel, Mr. Mahendra Bharti for the

petitioners and the learned counsel, Mr. Sidhendra Narayan Singh

for the opposite parties.

This review application has been filed by the petitioners
for review of the order dated 05.08.2016 passed by this Court in
Civil Misc. No.4408 of 2016 whereby this court dismissed the
miscellaneous case and thereby upheld the order of the executing
court holding that the objection filed under Order 21 Rule 97
C.P.C. is maintainable.

The only grievance of the petitioner is that the opposite
parties are not in possession of the suit property and, therefore, at
their instance, the application under Order 21 Rule 97 C.P.C. is
not maintainable. The learned counsel relied upon a decision of
Uttarakhand 2014 AIR CC 2010(UTR.) (Dayanand Shiksha
Sansthan v. State of Uttarakhand & Ors.) and submitted that in the



said decision it has been held that if the third party is not in physical possession of the suit property then the application under Order 21 Rule 97 C.P.C. is not maintainable. The learned counsel further relied upon the decision of the Kerala High Court reported in AIR 1972 Kerala 125 and submitted that in the same line, the Kerala High Court has also held that the objector must be in physical possession of the suit property.

In the present case at our hand, from perusal of paragraph 9 of the objection filed by the opposite parties under Order 21 Rule 97 C.P.C., the respondents are claiming direct physical possession over the suit property.

The learned counsel for the petitioner submitted that in fact, the case of the opposite parties is that they are in possession of the suit property through their tenant and placed reliance at paragraph 4 of the objection. From perusal of paragraph 4 of the objection, it appears that the statement has been made in relation to portion of plot no.129(kha) only. However, from statement of paragraph 3 and 9 of the objection petition, it becomes clear that the opposite parties are claiming physical possession over the suit property. All these matters cannot be decided in review application or in an application under Article 227 of the Constitution of India. It further appears that for the same property,



eviction suit was also filed in 2003 against the opposite parties which prima facie indicate the physical possession of the opposite parties. All these matters can only be decided in full fledged trial in the miscellaneous case under Order 21 Rule 97 C.P.C.

Thus, in my opinion, no case for review is made out. Accordingly, this review application is dismissed. The executing court shall expedite the disposal of this objection petition on merit.

(Mungeshwar Sahoo, J)

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