

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No. 59 of 2013

IN

C.R. 156 of 2012

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1(i) Anjana Devi, wife of Late Mahabir Lal

1(ii) Pintu Swaika

1(iii) Amit Agrawal

1(iv) Pradeep Swaika, all sons of late Mahabir Lal, resident of Hasanpur Bazar (Rampur Rajwa) P.O. & P.S. Hasanpur, District Samastipur, at present residing at Mohalla Gullo Bara, P.O. Lalbagh, P.S. Town Thana, Darbhanga, District Darbhanga.

.... Petitioners

Versus

1. Panna Lal Droliya

2. Om Prakash Droliya, both sons of late Chinki Ram

3. Anil Kumar

4. Sunil Kumar

5. Sushil Kumar

6. Sharwan Kumar

7. Manoj Kumar, all sons of late Ram Niwas

8. Smt. Shakuntala, wife of late Ram Niwas

9. Smt. Punam, D/o- late Ram Niwas,

All resident of Rampur Rajwa (Hasanpur Bazar) P.O. Hasanpur Sugar Mills, P.S. Hasanpur, District Samastipur

.... Opposite Parties 1st Set.

10. Nathu Prasad Swaika (deceased)

11. Sharwan Swaika, sons of late Ishwar Lal Swaika

12. Vijay Kumar, son of late Ram Narain Prasad.

All resident of Rampur Rajwa (Hasanpur Bazar) P.O. Hasanpur Sugar Mills, P.S. Hasanpur, District Samastipur

.....Opposite Parties 2nd Set.

13. Suresh Kumar Swaika, son of late Ishwar Lal Swaika, resident of Rampur Rajwa (Hasanpur Bazar) P.O. Hasanpur Sugar Mills, P.S. Hasanpur, District Samastipur at present residing at Punch Mandir Chowk Motihari, P.S. & District Motihari.

14. Basudeo Prasad, son of Shyam Sunder Agrawal, resident of Bansh Phetak, Banarsi, P.S. & Distrcit Banarsi

15. Ansuiya Devi, wife of Raj Kumar Agrawal, resident of Janki Mahal, Ayodhya P.S. & District Ayodhya (U.P.)

16. Amar Kumar

17. Kishan Kumar

18. Narendra Kumar

19. Pawan Kumar, all sons of late Kamla Pd. Agrawal. All resident of Bakhari Bazar, P.O. & P.S. Bakhari, District Begusarai.

20. Shobha Devi, wife of Gopal Khetan, resident of Maa Janki Electronics, Station Road Janakpur, P.S. & P.O. Janakpur (Nepal)

21. Pawan Kumar S/O Gopi Prasad Patodiya

22. Raj Kumar S/O Gopi Prasad Patodiya.

23. Bablu Kumar S/O Gopi Prasad Patodiya



24. Manju Devi W/O Bijay Kumar Goyanka Resident Of Main Bazar, Janakpur Dham, P.S. And District Janakpur (Nepal).
25. Rekha Devi W/O Shankar Lal Khemka Resident Of Bagha Bazar, P.S. Bagha, District East Champaran.
26. Ranu Devi W/O Pramod Kumar Poddar Resident Of Gulbara Madhuban, District East Champaran.
27. Punam Devi W/O Om Prakash Sharaf Resident Of Charch Road Bettiah, P.S. Bettiah, District West Champaran.
28. Mikki Devi W/O Om Prakash Udaipuria Resident Of Lal Bazar Chowk Bettiah, P.S. Bettiah, District Bettiah.
29. Lali Devi W/O Soshan Kumar Tulityan Resident Of At Punam Sinthetic Bank Road, Muzaffarpur, P.S. And District Muzaffarpur.
30. Deepak Kumar.
31. Rinku Kumar both S/O Mohan Lal Tibriwal Resident Of Ram Nagar, P.O. & P.S. Ram Nagar, District West Champaran.
32. Neera Devi W/O Ganesh Lal Jalan Resident Of Village And P.O. Belsand, District Sitamarhi.
33. Neena Devi W/O Prem Kumar Resident Of Akharaghat Muzaffarpur, P.O. & P.S. Muzaffarpur, District Muzaffarpur.
34. Munni Devi W/O Shankar Prasad Banka Resident Of Bank Road Muzaffarpur, P.O. And P.S. Muzaffarpur, District Muzaffarpur.
35. Shobha Devi W/O Sajjan Kumar Hisaria Resident Of Old Exchange Road, Sitamarhi, P.O. And P.S. Sitamarhi, District Sitamarhi.
36. Bishwanath Prasad Agrawal
37. Jai Prakash Agrawal both S/O Late Narain Prasad Resident Of Rampur Rajwa (Hasanpur) P.O. And P.S. Hasanpur, District Samastipur.
38. Gaytri Devi W/O Ramdeo Prasad Agrawal Resident Of Mohalla Pachbir, Begusarai, P.O. & P.S. Begusarai, District Begusarai.
39. Ravi Agrawal S/O Rajendra Prasad Agrawal Resident Of Mohalla Delhi Bazar Kathmandu Nepal, P.S. And District Kathmandu (Nepal).
40. Payal Agrawal W/O Shri Bilas Kumar Agrawal Resident Of Islampur, P.O. And P.S. Islampur, District Gorakhpur.
41. Bebi Agrawal W/O Ankush Agrawal Resident Of Delhi Bazar, Kathmandu, P.O. And P.S. Kathmandu, District Kathmandu Nepal.
42. Meena Devi W/O Om Prakash Jallan Resident Of Koli Koth, Goshala Road Muzaffarpur, P.S. And P.O. And District Muzaffarpur.
43. Banti Kumar S/O Gopal Prasad Makhariya Resident Of Ring Road Surat, P.S., P.O. And District Surat.
44. Ramautar Kejariwal
45. Pawan Kejariwal
46. Gopal Prasad Kejariwal
47. Pramod Kumar Kejariwal all S/O Late Mahadeo Lal Kejariwal Resident Of Teghra Bazar, P.O. And P.S. Teghra, District Begusarai.
48. Manju Devi W/O Ramanand Sureka Resident Of Gola Road, Samastipur, P.O. And P.S. And District Samastipur.
49. Kushum Devi W/O Binod Kumar Adhokiya Resident Of Durga Mandir Chowk, Jhajha, P.O., P.S. And District Jhajha.
50. Santosh Devi W/O Lalu Prasad Bagala Resident Of Patna City, P.O. And P.S. Patna City, District Patna.
51. Munni Devi W/O Mohan Lal Agrawal Resident Of Mohalla Saraiyaganj, Muzaffarpur, P.O., P.S. And District Muzaffarpur.
52. Bajrang Prasad



53. Ashok Kumar both S/O Late Kanhaiya Lal Resident Of Rampur Rajwa, P.S. Hasanpur, District Samastipur, At Present Residing At Marachi Ujagar, P.O. Hasanpur Sugar Mills, P.S. Hasanpur, District Samastipur.
54. Sharda Devi D/O Late Kanhaiya Lal W/O Shri Gopal Prasad Agrawal, At Present Residing In Mohalla Gola Road, Town Samastipur, P.O., P.S. And District Samastipur.
55. Pushapa Devi W/O Govind Prasad Agrawal Resident Of Mohalla Gola Road Samastipur, P.O., P.S. And District Samastipur.
56. Rajo Devi W/O Sheo Kumar Patoriya Resident Of Miscellaneous Stted, Surat, P.S. And District Surat.
57. Manju Devi W/O Shri Chhedi Lal Kaishan Resident Of Bank Road Rakasul, P.O., P.S. And District Raxaul.
58. Bina Devi W/O Pawan Kumar Maskara Jyoti Bastralaya, Meena Bazar, Raxaul, P.S. And District Raxaul.
59. Ashok Kumar Swaika
60. Pawan Kumar
61. Binod Kumar
62. Raj Kumar Swaika all S/O Late Banbari Lal
63. Pramod Kumar Swaika S/O Late Banbari Lal all Resident Of Hasanpur Bazar, Rampur Rajwa, P.S., P.O. Hasanpur, District Samastipur, At Present Residing In Mohalla Gullo Bara, Town Darbhanga, P.S. And P.O. Darbhanga, District Darbhanga.
64. Asha Devi W/O Rajiv Prasad Agrawal Resident Of Barauni, P.S. And P.O. Barauni, District Begusarai.
65. Sushil Kumar
66. Govind Kumar
67. Gopesh Kumar all S/O Late Hanuman Prasad Resident Of Hasanpur Bazar, P.S. And P.O. Hasanpur, District Samastipur, At Present Residing At Sakari, P.O. And P.S. Sakari, District Madhubani.
68. Sarita Devi W/O Kishun Kumar Resident Of Main Bazar Jainagar, P.S. And P.O. Jainagar, District Madhubani.

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Appearance :

For the Petitioner/s	:	Mr. Bhupendra Nr. Sinha, Adv. Mr. Shailendra Kumar, Adv.
For the O.P. 1 to 9	:	Mr. Uma Shankar Singh, Adv. Mr. Krishna Prasad Singh, Adv. Mr. Madheshwar Singh, Adv. Mr. Shishir Kumar Shishir, Adv.
For O.P. No. 10 (Heirs)	:	Mr. Satyendra Narayan Singh, Adv. Mr. Dinkar Raj Bhandari, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 11-08-2017

Heard learned counsel for the petitioners, learned counsel
appearing for the opposite parties 1st set as well as learned counsel



appearing for legal representative of deceased opposite party no. 10.

Original petitioner, namely, Mahabir Lal filed this review petition for review of impugned order dated 04.01.2013 passed in Civil Revision No. 156 of 2012 by which and where under a co-ordinate Bench of this court dismissed the said revision petition giving option to petitioner to file partition suit for redressal of his grievances.

It would appear from the record that opposite parties 1st set filed Title Suit No. 65 of 1999 against the original opposite party no. 10, namely, Nathu Prasad Swaika, opposite party no. 11, namely, Sharwan Swaika and opposite party no. 12, namely, Vijay Kumar for declaration that the aforesaid opposite parties occupied the suit premises as licensee which stood revoked and further for recovery of possession of the suit property. The aforesaid suit was decreed and subsequently, Execution Case No. 04 of 2010 was filed. In the aforesaid execution case, parwana was issued and accordingly, delivery of possession was affected and the opposite parties 1st set were put into the possession of suit property. However, the petitioner filed a petition under Order 21 Rule 99 of the C.P.C. before the execution court mentioning therein that he being co-sharer was necessary party in Title Suit No. 65 of 1999 but without impleading him as party the plaintiffs and defendants of the aforesaid suit having



entered into conspiracy got a fraudulent decree and, therefore, his right and title be adjudicated and he should be put into possession of the suit property. The learned execution court rejected the aforesaid petition passing order dated 23.06.2012 on the ground that delivery of possession has already been affected. The order dated 23.06.2012 of the execution court was challenged by the petitioner before this court by filing Civil Revision No. 156 of 2012 which was dismissed by a co-ordinate Bench of this court passing impugned order dated 04.01.2013 against which this review petition has been filed.

Learned counsel appearing for the petitioners submits that learned execution court erred in rejecting the aforesaid petition treating the said petition filed under Order 21 Rule 97 of the C.P.C. and ignoring this fact that delivery of possession had already been affected and petitioner rightly filed petition under Order 21 Rule 99 of the C.P.C. He further submitted that original petitioner, namely, Mahabir Lal happened to be co-sharer but he was not made party to the Title Suit No. 65 of 1999 and his right and title was not adjudicated in the aforesaid title suit but a co-ordinate Bench of this court did not pay any heed towards the aforesaid fact and directed the original petitioner to file partition suit which is not possible because the plaintiffs of Title Suit No. 65 of 1999 are not the co-sharers of the original petitioner. Learned counsel for the petitioners further submits



that there is apparent error on the face of the record because the original petitioner had only remedy to file petition under Order 21 Rule 99 of the C.P.C. and after dispossession in execution of decree passed in Title Suit No. 65 of 1999, he has been prevented from filing fresh suit also.

On the other hand, learned counsel appearing for the opposite parties 1st set refuted the above stated submissions arguing that in the present case, Order 21 Rule 99 of the C.P.C is not applicable because original petitioner claims himself to be co-sharer and he has not filed the aforesaid petition on the ground of his dispossession from the suit property. He submits that Order 21 Rule 99 of the C.P.C. applies in those cases where dispossession of a person other than judgment debtor is affected. He further submits that moreover, there is no apparent error on the face of the impugned order and, therefore, this review petition is liable to be dismissed.

The facts as placed by the parties are almost admitted and the grievance of the petitioners is that a co-ordinate Bench of this court while dismissing the Civil Revision No. 156 of 2012 failed to notice that no separate partition suit could have filed but in my view, there is no scope of review of impugned order because even if a court gives wrong finding, the said finding can be set aside by a higher court and the proper remedy to the petitioners is to go before the



higher court for challenging the impugned order because there is no apparent error or mistake on the face of the impugned order.

On the basis of aforesaid discussions, this review petition stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	22.08.2017
Transmission Date	N.A.

