

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 1225 of 2016

=====

1. Serajul Khan, Son of Late Habib Khan, Resident of village - Fulkaul, P.O. Meghwal Mathia, P.S. Ram Nagar, District - West Champaran.

.... Appellant/s

Versus

1. Suresh Sah.

2. Sohan Sah.

Both are Sons of Late Rang Lal Sah, Resident of village - Fulkaul, P.O. Meghwal Mathia, P.S. Ram Nagar, District - West Champaran.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Khatim Reza

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 23-08-2017

1. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

2. The petitioner in the present application, filed under Article 227 of the Constitution of India, is aggrieved by an order, dated 17.09.2016, passed by learned Sub Judge II, Bagaha, West Champaran, in Misc. Case No.2 of 2016 (in Execution Case No.5 of 2013), filed by him, under Order 21, Rule 97 of the Code of Civil



Procedure (*in short* 'Code'), whereby, the said miscellaneous case has been dismissed, on the ground that the petitioner is a stranger to the said execution case. Earlier, by order, dated 24.10.2016, this Court, while issuing notice to the respondents, had stayed the proceedings in Execution Case No.5 of 2013, pending in the Court of learned Sub Judge II, Bagaha, West Champaran. The respondent has now filed an application for vacating the stay order, dated 24.10.2016, being I.A. No.5214 of 2017 and, accordingly, the said I.A. No.5214 of 2017 has been placed today under the heading 'For Orders On Petition'.

3. With the consent of the parties, however, the main application has been heard and being disposed of on merits.

4. Learned counsel, appearing on behalf of the petitioner, assailing the impugned order, dated 17.09.2016, has relied on a Hon'ble Supreme Court's decision in case of ***Sameer Singh and Anr. Vs. Abdul Rab and Ors., reported in (2015) 1 SCC 379***, and has submitted that the court below ought not to have rejected the petitioner's application on the ground of his being a stranger.

5. Learned counsel, appearing on behalf of the petitioner, appears to be correct in his contention, in view of the law laid down by the Hon'ble Supreme Court in the case of ***Sameer Singh (supra)*** in paragraph 21 of the said judgment. Relying on precedents, the



Supreme Court, in the case of ***Sameer Singh (supra)*** has held that the executing court has authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties and it also includes claim of a stranger, who apprehends dispossession or has already been dispossessed from the immovable property.

6. I may usefully take note of the decision of the Supreme Court in case of ***Noorduddin Vs. K.L. Anand, reported in (1995)1 SCC 242***, which has been referred to and relied on in case of ***Sameer Singh (supra)***, paragraph 8 of which reads thus :-

“8. Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In



other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code Amendment Act, 1976, right of suit under Order 21, rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.”

7. In view of what has been laid down by Supreme Court in case of ***Sameer Singh (supra)*** and ***Noorduddin (supra)***, dealing with Order 21, Rule 97 of Code, the court below ought not to have rejected the petitioner's application only on ground of him being a stranger. When an application is made under Order 21, Rule 97 of the Code, the court is enjoined to adjudicate upon right, title and interest claimed in



the property arising between parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property.

8. It is the specific plea on behalf of the petitioner, which he had taken in his application before the court below filed under Order 21, Rule 97 of the Code, that he apprehended his dispossession in execution of decree. Learned counsel, appearing on behalf of the respondent, has not been able to counter the submission advanced on behalf of the petitioner. The impugned order, dated 17.09.2016, is, accordingly, set aside. The court below is directed to consider the Misc. Case No.2 of 2016, filed by the petitioner, afresh and pass appropriate orders in accordance with law.

9. The Court also expects that the disposal of execution case is expedited.

Sanjeev/-

(Chakradhari Sharan Singh, J)

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

