

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.119 of 2017

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1. Satyendra Singh, son of Tapeswar Singh, resident of village Dharampura, P.S. Jamhore, District Aurangabad (Bihar)
 2. Ram Nandan Pal, son of Late Sardar Pal, resident of village Dharampura, P.S. Jamhore, District Aurangabad (Bihar)

... .. **Petitioners**

Versus

1. Brij Kishore Prasad Sinha, son of Late Nagendra Prasad, resident of village Jamhore, P.S. Jamhore, District Aurangabad (Bihar)
 2. Smt. Geeta Kumari, daughter of Late Nagendra Prasad, wife of Sri Pramode Prasad, resident of Quarter No. E-1, Irrigation colony, Katari Hill Road, Gaya
 3. Puspa Kumari, daughter of Late Nagendra Prasad, wife of Dharendra Prasad, resident of Bank of India Soni Bhawan, Birchand Patel Path, District Patna
 4. Anirudh Kumar Sinha, son of Nagendra Prasad
 5. Brij Kishore Prasad Sinha, son of Nagendra Prasad
 6. Shyam Kishore Prasad sinha, son of Nagendra Prasad
 7. Sanjay Sinha, son of Nagendra Prasad
- 4-7 are resident of village Jamhore, P.S. Jamhore, District Aurangabad (Bihar)

.....**Opp. Party 1st Set/plaintiffs**

8. Mathura Prasad Karan, son of Basudeo Lall
9. Mirtunjay Prasad Karan, son of Mathura Prasad Karan
10. Manoj Kumar Karan, son of Mathura Prasad Karan
11. Ashok Kumar Karan, son of Mathura Prasad Karan
12. Udal Prasad Karan, son of Mathura Prasad Karan

8-12 are resident of village Jamhore, P.S. Jamhore (Obra), District Aurangabad (Bihar)

..... **Opp. Party 2nd Set/defendant 1st Set**

13. Satish Chandra Karan, son of Jagarnath Prasad
 14. Chandra Sekhar Prasad karan, son of Jagarnath Prasad,
- 13 and 14 are resident of village Aurangabad, Mohalla Kewani Toli, P.S. and District Aurangabad (Bihar)

..... **Opp. Party 3rd Set/defendant 2nd Set**

Appearance :



For the Petitioner/s : Mr. Dronacharya
Mr. Rajesh Kumar
Mr. Santosh Kumar Pandey
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 17-10-2017

I.A. No.4436 of 2017

I. A. No. 4436 of 2017 has been filed by the petitioners, under Section 5 of the Limitation Act, seeking condonation of delay in preferring the present revision application.

Having considered the reasons assigned in the present petition seeking condonation of delay and having heard the learned counsel for the petitioners, this Court is satisfied that the petitioners were prevented by sufficient causes from preferring the revision application within time.

In view of the above, the delay in preferring the revision application is hereby condoned.

I. A. No. 4436 of 2017 shall stand disposed of.

CIVIL REVISION 119 OF 2017

Heard Mr. Dronacharya, learned Counsel appearing on behalf of the petitioners.



Aggrieved by an order, dated 15.11.2016, passed, in Execution Case No. 7 of 2010, by learned Sub Judge I, Aurangabad, the present civil revision application has been filed under Section 115 of the Civil Procedure Code.

Before I refer to the order, which is impugned, I must take note of certain basic facts to appreciate the background in which the impugned order has been passed.

There was a partition suit filed by the Opposite Party 1st Set, giving rise to Partition Suit No. 58 of 1996/01 of 2000, which came to be decreed in their favour, by judgment and decree, dated 10.05.2000/29.05.2000, by learned Sub Judge V, Aurangabad. The defendants 1st set/Opposite Party 2nd Set preferred appeal against the said judgment and decree, which gave rise to Partition Appeal No. 37 of 2000/01 of 2005. The lower appellate court affirmed the judgment and decree of the Trial Court, by judgment and decree, dated 17.05.2007/28.05.2007.

The Opposite Party 1st Set/ decree holders filed execution case, pursuant to which, it is the case of the petitioners that possession was handed over to the Opposite Party 1st Set/decreed holders. The petitioners are purchasers from the Opposite Party 2nd Set. The lower appellate court, while dismissing the appeal,



directed that the appellants or their alleged vendees shall not interfere with the possession of the plaintiffs.

Upon delivery of possession in favour of the Opposite Party 1st Set/decree holders through Execution Case No. 01 of 2002/04 of 2004 (first execution case), the Opposite Party 1st Set/decree holders filed Execution Case No. 7 of 2010 (second execution case), alleging interference by the vendees with their possession. The petitioners, who are vendees of the defendants 1st set/Opposite Party 2nd set, have objected to maintainability of the second execution case on various grounds. The Court below, by the impugned order, dated 15.11.2016, has rejected the objection and has held the Execution Case No. 7 of 2010 to be maintainable in view of the decree of the appellate court.

Mr. Dronachayra, learned Counsel appearing on behalf of the petitioners, has submitted that it was beyond the jurisdiction of the lower appellate court to have passed any decree in favour of Opposite Party 1st Set, varying the decree of the Trial Court, in the absence of any cross objection or cross appeal, filed on behalf of the Opposite Party 1st Set. He has accordingly submitted that the executing court wrongly proceeded on the basis of the decree of the lower appellate court. In support of his contention, he has relied on a Supreme Court's decision, in the case of **Banarsi and**



Others v. Ram Phal, reported in **(2003) 9 SCC 606**, with special reference to paragraph 2 thereof.

He has further submitted that once the decree came to be executed, it was not upon for the Court below to have entertained second execution case. He has relied on a Supreme Court's decision, in the case of **Shew Bux Mohata and Another v. Bengal Breweries Ltd. And Others (AIR 1961 SC 137)**.

This is noteworthy that the petitioners were not party to the suit. Claiming to be the purchasers from the Opposite Party 2nd Set/defendants 1st Set, they had filed application for impleadment at the stage of first appeal before the Court below, which was rejected by the Trial Court. Their attempt to get impleaded by filing Civil Revision No. 864 of 2005 before this Court remained unsuccessful with the passing of order, dated 17.10.2006, in C. R. No. 864 of 2005. While dismissing the civil revision application, this Court took note of the findings recorded by the Trial Court that the vendor of the petitioners had transferred more area of land than they were entitled to, after partition of the suit land. This court, in the said order, dated 17.10.2006, categorically observed that the petitioners could not maintain better claim than his vendor.



It has been pointed out by learned Counsel for the petitioners that a second appeal filed by the Opposite Party 2nd Set/defendant 1st Party is pending before this Court.

In the present civil revision application, the Court need not go into the correctness or otherwise of the decree passed by the lower appellate court. The plea on behalf of the petitioner, while relying on the Supreme Court's decision, in the case of **Banarsi** (supra), may be available to the appellants in the second appeal, which is pending. The said decision does not have any application in the present set of facts and circumstances.

This is also to be noted that the first execution case was disposed of before passing of the decree by the lower appellate court. In such circumstance, maintaining second execution case based on the decree of the lower appellate court cannot be said to be not maintainable. The decision of the Supreme Court, in the case of **Shew Bux Mohata** (supra), has no application in the present set of facts inasmuch as in that case, the Supreme Court was dealing with a situation where the judgment debtor was not bodily removed in execution of the decree because of certain arrangements arrived at between him and the decree holders and the decree holders had not required the removal of the judgment debtor from the premises. In that case, the decree holders had, on



their own accepted delivery of possession with the judgment decree remaining on the premises with permission. The facts, in the case of **Shew Bux Mohata** (supra), and the ratio laid down in that case are materially different, which cannot be applied in the present case.

I do not find any illegally in the impugned order. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01-11-2017
Transmission Date	N/A

