

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.193 of 2017

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Lallan Prasad Gupta

.... Petitioner/s

Versus

Dumraon Properties Enterprises (Private Limited) Through The Secretary
& Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey
Mr. Projesh
Mr. Parth Gaurav
For the Respondent/s : Mr. Krishna Nandan Singh
Mr. Kamal Deo Sharma

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

4 22-11-2017 Heard learned counsel for the petitioner as well as
learned counsel appearing for the opposite party no. 1.

2. The judgment debtor/ petitioner being aggrieved by
the order dated 15.07.2017 passed by the learned Munsif,
Dumraon in Execution Case No. 05 of 1991 has preferred this
Civil Revision petition. The learned Munsif vide the impugned
order dated 15.07.2017 dismissed the petition filed by judgment
debtor/ petitioner under section 47 of the Civil Procedure Code.

3. The decree holder/ opposite party no.1, initially,
filed Title suit no. 32 of 1980 which was decreed and the matter
went up to the Apex Court. The Apex Court also confirmed the
judgment and decree passed by the trial court. Subsequently,
Execution Case bearing Execution Case No. 05 of 1991 was filed



and in the aforesaid execution case, the judgment debtor/petitioner filed petition under section 47 of the Civil Procedure Code on several grounds including this ground that the decree in question is not an executable decree. Learned Munsif entertained the aforesaid petition in Execution Case No. 05 of 1991 and passed the impugned order dated 15.07.2017 dismissing the above stated petition.

4. Learned counsel appearing for the petitioner assailed the impugned order submitting that the learned Munsif committed an error in entertaining the petition filed under section 47 of the Civil Procedure Code in Execution Case No. 05 of 1991 and also committed an error in dismissing the aforesaid petition, without giving any opportunity of adducing evidence to the parties. He further submits that Rule 23 of Civil Court Rules says that all plaints and petitions required to be entered in any register must be registered on presentation, irrespective of any question as to their possible rejection or of their having to be returned for amendment and similarly, Rule 459 of Civil Court Rules says that if a petition under section 47 is filed, the said petition shall be registered as miscellaneous jurisdiction cases and a miscellaneous judicial inquiry shall be conducted but in present matter, the learned Munasif failed to register the miscellaneous judicial case



on the basis of petition filed under section 47 of the Civil Procedure Code and also failed to make proper judicial inquiry as he had not given any opportunity to the parties to adduce evidence and, therefore, the impugned order cannot sustain in the eye of law.

5. On the other hand, learned counsel appearing for the decree holder/ opposite party no. 1 refuted the above stated submissions arguing that no doubt, the learned Munsif did not register miscellaneous judicial case on the basis of petition filed under section 47 of the Civil Procedure Code but admittedly, the judgment debtor/ petitioner filed the petition under section 47 of the Civil Procedure Code in Execution Case No. 5 of 1991 and, the judgment debtor/ petitioner had not made any prayer for institution of miscellaneous judicial case or for production of any evidence. He further submits that the learned Munsif having discussed the issues raised in the petition passed the impugned order and, therefore, there is no illegality, irregularity or impropriety in the impugned order.

6. The opposite parties/ judgment debtors nos. 2 to 17 have not appeared before this Court as yet and the decree holder/ opposite party no. 1 has suo motu appeared before this Court. It is an admitted position that judgment debtor/ petitioner as well as



judgment debtor/opposite party nos. 2 to 17 are members of same family and the interest of judgment debtor/ petitioner as well as judgment debtor/ opposite party nos. 2 to 17 is almost similar and, therefore, in my opinion, this petition can be disposed of even in absence of judgment debtor/ opposite party nos. 2 to 17.

7. It is an admitted position that parties are fighting since last three decades and several round of litigations have already been taken place between them. It is also an admitted position that the judgment debtor/ petitioner had filed Title suit no. 220 of 2014/ 814 of 2014 and had taken an made attempt for stay of Execution Case No. 05 of 1991 but he failed in his attempt. However, he filed petition under section 47 of the Civil Procedure Code before the court below raising several issues regarding the execution of decree. The judgment debtor/ petitioner has raised specific objection before the Munsif that exact location and area of the disputed property has not been mentioned in the decree and, therefore, the decree is not an executable decree. However, the learned Munsif turned down the above stated objection and other objections but admittedly, the learned Munsif passed the aforesaid order in Execution Case No. 05 of 1991 and he failed to institute miscellaneous judicial case and also did not provide any opportunity to the concerned parties to adduce evidence. Although



the aforesaid defect appears to be procedural defect but due to the aforesaid procedural defect, the parties have been deprived of their valuable right of adducing evidence in course of judicial inquiry.

8. Therefore, in the aforesaid circumstance, this Civil Revision Petition stands disposed of setting aside the order dated 15.07.2017 passed in Execution Case No. 05 of 1991 with direction to Munsif Dumraon to register miscellaneous judicial case on the basis of petition filed under section 47 of the Civil Procedure Code and conduct a fresh judicial inquiry giving opportunity to the parties to adduce evidence in support of their claim and shall dispose of the aforesaid miscellaneous judicial case within two months from the date of receipt/ production of a copy of this order. The learned Munsif may proceed to conduct the judicial inquiry in the miscellaneous judicial case on day to day basis. It is also made clear that there is no need to issue notice to respondent nos. 2 to 17 in the aforesaid miscellaneous judicial case and the concerned court may proceed in the aforesaid miscellaneous jurisdiction case even in the absence of opposite party nos. 2 to 17. The court while proceeding in miscellaneous judicial case shall keep in mind that no unnecessary adjournments shall be given to the parties and, at any cost, the aforesaid



miscellaneous judicial case shall be disposed of within the above
stated period of two months.

(Hemant Kumar Srivastava, J)

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