

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.278 of 2016

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1. Shankar Prasad Saraf
 2. Kashi Nath Verma
 3. Lattu Verma Sl. No 1 to 3 are sons of late Gorakh Nath Sharaf Resident of Mohalla- Nalband Toli, P.O - and P.S - Buxar, District - Buxar

.... Appellant/s

Versus

1. Smt. Lali Devi Wife of Baijnath Prasad resident of Vilage/Mohalla - Thatheri Bazar, P.S- Buxar(Town), Distt- Buxar.
2. Sidhnath Prasad Son of Dukhi Ram Saraf Resident of village - Bara, Police Station- Bamhar, District - Ghazipur. At presently residing at Thatheri Bazar, P.S- Buxar, District - Buxar.
3. Chandram Devi Wife of late Shambhu Prasad
4. Pushpa Devi Daughter of late Shambhu Prasad
5. Sangeeta Devi Daughter of late Shambhu Prasad
6. Arvind Kumar Son of late Shambhu Prasad
7. Amit Kumar Son of late Shambhu Prasad
8. Abhishek Kumar Son of late Shambhu Prasad Sl. No 3 to 8 are resident of village - Bara, P.S.- Bamhar, District - Ghazipur. At presently residing at Shahpur Cold Storage Banaras Sorekuan, P.S- Banaras, District Banaras.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar Roy, Adv.

For the Respondent/s : Mr. Shashi Shekhar Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-03-2017

Heard learned counsel for the petitioners and learned counsel for the plaintiff-respondent no. 1.

The legal acceptability of the impugned order by which the learned court below has turned down the objection as raised by the



judgment debtor questioning the maintainability of the execution case has been challenged in this application under Article 227 of the Constitution of India.

The plaintiff-respondent no. 1 filed the title suit for grant of injunction against the defendant-petitioners for restraining them from interfering in the use of the suit land as Rasta by the plaintiff. At the appellate stage, the said suit was decreed granting the relief as prayed by the plaintiff. The plaintiff-respondent no. 1 thereafter filed the present Execution Case No. 04 of 2004 praying for execution of the decree. The judgment debtor raised objection under Section 47 C.P.C. questioning the maintainability of the execution case. The learned court below by the impugned order has held that the execution case is maintainable as the decree is executable under the provision of Order 21 Rule 32 C.P.C.

Learned counsel for the petitioner could not point out any provision by which a decree for injunction cannot be executed. The provision as contained in Order 21 Rule 32 is very clear and it is also by now well settled that the decree for injunction either prohibitory or mandatory can be put to execute under the said provision. In the impugned order, the learned court below has taken into notice the report by the Pleader Commissioner as well as the local S.H.O. and thereafter has come to the finding that there is a wall of the judgment debtor over the suit



Rasta creating obstruction in its use as granted by the decree to the plaintiff. The aforesaid findings of fact as well as the provision of law have been rightly considered by the learned court below rejecting the prayer on behalf of the judgment debtor petitioners raising objection to the maintainability of the execution case. In this backdrop, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The present application is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

AFR/NAFR	
CAV DATE	
Uploading Date	17.04.2017
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