

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1185 of 2017

1. Mostt. Budhia Devi, Wife of Late Ram Udar Rai
2. Raj Kumar Rai All Sons of Late Ram Udar Rai, resident of Panapur Tola-Nakta Diara, P.S. Dighaghat, District Patna. at Present residing at Dighaghat, Post Digha, District Patna.
3. Birendra Rai
4. Ashok Rai
5. Harendra Rai
6. Surendra Rai Both Sons of Late Sushil Rai, resident of Panapur Tola-Nakta Diara, P.S. Dighaghat, District-Patna.
7. Tribhuvan Rai
8. Ram Uchit Rai, Son of Late Ram Lakhan Rai
9. Ram Binod Rai, Son of Late Ram Lakhan Rai
10. Shyam Sunder Rai
11. Randhir Rai All Sons of Late Durga Rai
12. Pappu Rai @ Pappu Kumar
13. Jai Prakash Rai, Son of Late ram Lakhan Rai All Resident of Village-Nakta Diara, P.S. Digha, District Patna.

... .. Appellant/s

Versus

1. Ram Bachan Rai, Son of Late Gaya Rai
2. Ram Ishwar Rai
3. Mahesh Rai All Sons of Ram Bachan Rai
4. Dinesh Rai
5. Lal Babu Rai
6. Deo Lal Rai Both Sons of sri Bhagwan Rai null
7. Mohan Rai
8. Hari Naraian Rai
9. Suraj Narain Rai All Sons of Deo Lal Rai
10. Chit Narain Rai
11. Bachcha Rai, Son of Mohan Rai All resident of Village Panapur, Tola Nakta Diara, P.s. Digha, District Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Hemendra Prasad, Sr. Adv.
& Mr. Kamlesh Prasad Yadav, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 12-10-2017 Heard learned counsel for the parties.

2. The petitioners are aggrieved by an order, dated



29.04.2017, passed by the learned Sub-Judge IV, Patna in Misc. Case No. 12 of 2011, whereby an application filed on behalf of the defendants under Section 144 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) has been allowed.

3. The short facts of the case are that the petitioners are plaintiffs of Title Suit No. 136 of 1969 instituted for declaration of title and recovery of possession of the suit land. An *ex parte* decree was passed in the said Title Suit on 03.05.1976. The respondents, who are defendants in the title suit, did not prefer any appeal against the said *ex parte* decree, rather they filed an application under Order 9 Rule 13 of the Code for setting aside the *ex parte* decree, which too, was dismissed for default on 10.01.1987. The Civil Revision application filed before this Court against the order, dated 10.01.1987, also came to be dismissed on 08.04.2017. Nearly 15 years after passing of the *ex parte* decree, the petitioners filed an Execution Case No. 05 of 1991 for execution of the decree. The respondents objected maintainability of the said execution case and filed petition under Section 147 of the Code taking a plea that decree was not executable, being time barred. The Executing Court overruled the said objection over non-maintainability and dismissed the



petition filed by the respondents/defendants under Section 47 of the Code. The Civil revision application filed against the order of the Executing Court rejecting respondents' application under Section 47 of the Code also came to be dismissed by the High Court. The decree appears to have been executed by the process of acquisition, in the meanwhile.

4. The order of this Court passed in Civil revision, whereby this Court had upheld the order passed by the Executing Court rejecting the respondents' petition under Section 47 of the Code came to be challenged before the Supreme Court, which gave rise to Civil Appeal No. 1100 of 2000. The Supreme Court held that the application for execution filed on 05.04.1991 was clearly time barred having been filed beyond the period of 12 years as prescribed under Article 136 of the Limitation Act. The Supreme Court, accordingly, set aside the order passed by this Court and holding that execution proceeding itself was not maintainable, being time barred by operation of Article 136 of the Schedule to the Limitation Act.

5. The Respondents, thereafter, filed an application for restitution, which has been allowed by the impugned order dated 29.04.2006, passed in Misc. Case No. 12 of 2011. The Court below took note of the claim of the petitioners that they



had taken only symbolic possession of the suit premises in the said Execution Case No. 05 of 1991, the Court below allowed the application filed under Section 144 of the Code.

6. Learned Senior counsel appearing on behalf of the petitioners has submitted that the decree of the trial Court is intact, whereby their title has been declared with a direction for recovery of possession. He has submitted that now since the decree has been executed, no order for restitution ought to have been passed by the Court below, on the basis of the Supreme Court judgment passed in ***Civil Appeal No. 1100 of 2000 (Ram Bachan Rai and ors. Vs. Ram Udar Rai and ors)*** on 05.05.2006.

7. I do not find any illegality in the impugned order. The Supreme Court in most unambiguous terms held in the judgment in case of ***Ram Bachan Rai and ors. Vs. Ram Udar Rai and Ors*** (supra), that the execution petition itself was time barred, in view of Article 136 of the Limitation Act, which prescribes 12 years as the period of limitation. It is the case of the petitioners that they were given symbolic possession of the suit property through execution. The said execution proceeding itself has been held to be time barred and, therefore, not maintainable by the Supreme Court.



8. In that background, I do not find any illegality in the impugned order.

9. This application, which has been filed under Article 227 of the Constitution of India, stands dismissed.

(Chakradhari Sharan Singh, J)

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