

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.691 of 2016**

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1. Tej Narayan Singh
2. Prem Kishore Singh
3. Ashok Kumar Singh all are sons of late Jagat Narayan Singh all are resident of village Sakraicha, P.S.- Phulwari Shariff, District - Patna
4. Suresh Prasad Singh son of late Bajhawan Singh
5. Lav Kumar
6. Kush Kumar
7. Dharam Narayan Singh all are sons of Sri Suresh Prasad Singh resident of Village - Rukunpura, P.S.- Danapur, District-Patna.... Appellant/s

Versus

1. Urmila Singh wife of late Rana Pratap Singh
2. Dr. Abhay Kumar
3. Anil Kumar
4. Avinash Kumar
5. Smt. Sheela Singh
6. Smt. Anamika Kumari all are sons and D/o late Rana Pratap Singh resident of Village - Jamalpur, P.S.-Bikram, District - Patna. At Present Nitibagh Colony Society Plot no.18 Mauza-Dhanaut, P.S.- Rupaspur, District - Patna Respondent/s

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Appearance :

For the Appellant/s : Mr. Arvind Prasad Singh & Suresh Singh
For the Respondent/s : Mr. Ganpati Trivedi, Sr. advocate
Mr. Manoj Kumar

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER**

7 09-03-2018

Heard both sides.

The relevant facts giving rise to filing of this Civil Misc. petition are that one Raudi Mahto got three daughters, namely, Bipti Kunwar, Deo Kunwar and Ram Kunwar. Raudi Mahto died leaving behind his widow, Kulwanti Devi and three daughters. On 14.11.1941 Kulwanti Devi, widow of Raudi Mahto, gifted her entire property in equal share to her three daughters. On 04.05.1941 Kulwanti Devi firstly executed the deed of surrender with regard to her property in favour of her two daughters, namely, Deo Kunwar and Ram Kunwar but she executed registered deed of correction on 10.11.1941 and thereafter she



executed the deed of gift in favour of all her three daughters on 14.11.1941. Jagat Narayan Singh, son-in-law of Bipti Devi, filed Title Suit No. 147 of 1977 for 1/3rd share in the property of Kulwanti Devi on the basis of gift deed executed by Kulwanti Devi. The suit was decreed on 08.04.1980. Deo Kunwar and Ram Kunwar filed Title Appeal No. 530 of 1980 in this court and the Title Appeal was dismissed but, during the pendency of Title Suit No. 147 of 1977, Deo Kunwar and Ram Kunwar gifted the entire property in favour of Suresh Singh and his wife Savitri Devi on 20.03.1978. Suresh Singh and Savitri Devi executed sale deed in favour Nitibagh Sahkari Grih Nirman Samiti on 16.08.1983. The respondents are purchasers from the allottees of the society, namely, Meena Mandal and Manjula Singh. The respondents filed petition under Order XXI Rule 97 of the C.P.C. in the execution case filed by the decree holder and the petition filed by respondents were numbered as Misc. case No. 3 of 2013 and 4 of 2013. The decree holder filed petition to dismiss the Misc. cases stating therein that the respondents are purchasers from the allottees during the pendency of Title Suit No. 147 of 1977 and in view of provision as contained in Order XXI Rule 102 of the C.P.C. the petition filed under Order XXI Rule 97 of the C.P.C. is not maintainable but the learned Sub-Judge vide order dated 16.04.2016 dismissed the petition of the decree holder and proceeded further in the Misc. cases.

The learned counsel for the petitioners submits that admittedly Jagat Narayan Singh filed Title Suit No. 147 of 1977 for 1/3rd share in the property of Raudi Mahto and Kulwanti Devi. The suit was decreed and the defendants, Deo Kunwar and Ram Kunwar, two daughters of Kulwanti Devi, filed Title Appeal No.



530 of 1980 and the same was dismissed but during the pendency of Title Suit Deo Kunwar and Ram Kunwar executed gift deed dated 20.03.1978 in favour of Suresh Singh and his wife. Suresh Singh and Savitri sold the land of khata No. 1334 area 20 decimal in favour of Nitibagh Housing Cooperative Society. The Society allotted the land to Meena Mandal and Manjula Singh and they sold the land to the respondents.

Mr. Ganpati Trivedi, the learned senior counsel for the respondents, on the contrary, submitted that the respondents had no knowledge about pendency of Title Suit and some protection should be granted to them so that respondents may file title suit.

The sole question arose for consideration whether the petition under Order XXI Rule 97 of the C.P.C. is maintainable?

Admittedly, during the pendency of Title Suit No. 147 of 1977, Deo Kunwar and Ram Kunwar, two daughters of Kulwanti Devi, gifted the property, which was subject matter of title suit No. 147 of 1977 to Suresh Singh and Savitri Devi. Savitri executed the sale deed in favour of Nitibagh Housing Co-operative Society and the respondents are purchasers from the allottees of the Society.

Rule 102 of Order XXI is very relevant, which reads thus:-

“102. Rules not applicable to transferee pendente lite- Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgement-debtor has transferred the property after the institution of the suit in which the decree was passed or to the



dispossession of any such person.”

From a bare perusal of the aforesaid provision, it is evident and clear that petition under Order XXI Rule 97 is not maintainable if the same is presented on behalf of transferee pendente lite. Admittedly, the respondents are transferee pendente lite and, therefore, Misc. petition No. 3 of 2013 and 4 of 2013 should have been dismissed but the learned Sub-Judge has committed jurisdictional error by not exercising the power vested in him. Accordingly, the orders dated 16.04.2016 passed in Misc. case No. 3 of 2013 and 4 of 2013 are set aside. This Civil Misc. petition is allowed.

The respondents, if so advised, may file title suit for redressal of their grievance.

(Prabhat Kumar Jha, J)

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