

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16584 of 2014

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Raghuwar Sharan S/o Late Ramayan Sharan Srivastava Resident of Mohalla - Pokhara Chawk, at and P.O. Narkatiyaganj, P.S. Shikarpur, Distt. West Champaran

.... Petitioner/s

Versus

1. Bhim Prasad Sah S/o Late Gudari Sah resident of Mohalla - Naya Tola, Prakash Nagar, Narkatiyaganj, P.S. Shikarpur, Distt. - West Champaran
2. Panna Lal Sah S/o Late Gudari Sah resident of Mohalla - Naya Tola, Prakash Nagar, Narkatiyaganj, P.S. Shikarpur, Distt. - West Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Advocate

For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 24-04-2018

This application has been filed for setting aside the order dated 18.07.2014 passed by Sub Judge-IV, Bettiah, West Champaran in Miscellaneous Case No.21 of 2012 (arising out of Execution Case No.01 of 2010). The court below as per impugned order confirmed the possession of the applicant of Miscellaneous Case No.21 of 2012 over the land in dispute and kept the file pending for determination of title of the parties.

2. Heard learned counsel for the petitioner. Nobody appeared for the respondents on repeated calls.

3. Learned counsel for the petitioner submits that the petitioner filed an Eviction Suit No.191 of 2002 against the respondent no.2 which after contest was decreed as per judgment



dated 13.08.2009. The respondent no.2 who was tenant in the suit premises preferred Ist Appeal No.55 of 2011 in the Court of District Judge, Bettiah which was dismissed as per judgment and decree dated 23.11.2011. Thereafter the respondent no.2 preferred Second Appeal No.05 of 2012 before this Court which was also dismissed on 24.07.2013. During the pendency of Ist Appeal, the petitioner filed Execution Case No.01 of 2010 in the Court of Sub Judge-IV, Bettiah against the judgment debtor respondent no.2. The brother-in-law of judgment debtor filed a Miscellaneous Case No.24 of 2011 which was dismissed by the Executing Court on 22.06.2012. Thereafter, the full brother of respondent no.2 filed Miscellaneous Case No.21 of 2012 resisting the execution of judgment and decree under Order 21 Rule 97 of CPC on the ground that the disputed land belonged to Bettiah Raj and the said Bettiah Raj had settled the land measuring 8 kathas 5 dhurs in favour of his ancestor, namely, Dhup Sah. The disputed land as per partition and settlement between the heirs of Dhup Sah, fell in the share of father of respondent nos.1 and 2. The respondent no.1 on the strength forged fabricated settlement paper has started claiming the land under Execution case. The court below recorded statement of witnesses and also exhibited documents and after hearing declared possession of the respondent no.1 over the land in question.

The learned counsel further submitted that the decree holder



had filed a petition under Section 340 of the CPC for getting the matter enquired as regards committing fraud in manufacturing the settlement paper and using the said paper in Court. The petitioner filed a complaint case no.2413 of 2012 before CJM, Bettiah in which cognizance has been taken against the respondent. The court below did not pass any order on the petition filed under Section 340 of the Cr.P.C. and kept the matter pending for deciding the same at the time of disposal of miscellaneous case. The respondent no.1 who is applicant of Miscellaneous Case No.21 of 2012 is none-else than the full brother of judgment debtor respondent no.2. The judgment debtor never asserted either his exclusive title or joint title with his brother on the basis of alleged settlement paper. The petitioner, thereafter filed a transfer petition bearing Miscellaneous Case No.37 of 2014 before District Judge for transfer of Miscellaneous Case No.21 of 2012 from the concerned Court to some other Court. The learned District Judge called for a report from the executing Court and when the transfer matter was before District Judge, the executing Court as per impugned order confirmed the possession of applicant of Miscellaneous Case No.21 of 2012 without giving any findings on the title and kept the matter pending for deciding title.

4. The court below has erred in passing the order in piece meal. The court below without ascertaining right and title has declared



possession of the respondent no.1 who is full brother of respondent no.2 (judgment debtor). The said observation and finding is against the materials on record. The respondent neither filed any counter affidavit controverting the allegation made in the petition nor appeared at the time of hearing.

5. In view of above discussions, the impugned order is set aside and this application is allowed. The matter is remitted to the court below to dispose of the Miscellaneous case in accordance with law.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.04.2018
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