IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18563 of 2014

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Raj Shekhar Dwivedi S/O Late Anirudh Dwivedi, resident of village- Ghejan, Pragana- Ikil, P.O. & District- Gaya.

.... Petitioner

Versus

1. Ram Naresh Dubey S/O Sarju Dubey,
2. Ram Pravesh Dubey S/O Sarju Dubey

Both residents of village- Ghejan, Pragana- Ikil, P.O. & District- Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. S.S. Dwivedi, Sr. Advocate
Mr. Parth Gaurav, Advocate
Mr. Mithilesh Kr. Upadhyay, Advocate
Mr. Jay Shivshaktyanand, Advocate

For the Respondent/s : Mr. Kamleshwar Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 29-08-2018

Petitioner before this court is decree-holder of Execution Case No.01 of 1985 which was pending in the court of learned Munsif, Jehanabad. He has filed this writ application for quashing the order dated 29.08.2014 whereunder his execution case was dismissed as not maintainable.

2. Heard learned counsels for the petitioner and the respondents.

3. It appears that the petitioner filed the aforesaid Execution Case No.01 of 1985 for realization of cost awarded in his favour as per judgment and decree passed in Title Suit No.68 of 1969. The petitioner filed an amendment petition seeking relief of

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removal of chhajja and closing the window which was opened during pendency of execution case. It has been submitted that the learned court below as per judgment and decree has injuncted the judgment debtor from making any construction. The learned court below dismissed the execution case holding that although the suit was decreed but no relief for closing window and dismantling the chhajja was granted. The executing court has observed that it has no jurisdiction to go beyond the decree and accordingly dismissed the execution case.

4. On going through the execution petition which is annexed with the writ application, I find that the petitioner-decree holder initially filed execution case for realization of cost which was awarded by the trial court. By subsequent amendment, the petitioner prayed for removal of encroachment and closing the window which was allegedly opened by the judgment-debtor during pendency of the execution case. The learned court below has dismissed the case *in limine* holding that the decree is not executable as regards removal of encroachment and closing the window. The said prayer appears to be against the relief claimed by the decree-holder. The petitioner-decree holder is entitled to cost only as mentioned in execution petition which was awarded by the trial court.

5. In view of above facts and circumstances, the order

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dismissing the execution case *in limine* is not sustainable and is accordingly set aside. The decree is quite executable as regards cost awarded to the decree-holder. This writ application to this extent is allowed and the court below is directed to proceed with the case for realization of cost.

(Sanjay Kumar, J)

Harish/-

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CAV DATE	
Uploading Date	06.09.2018
Transmission Date	

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