

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.76 of 2014

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Madhav Singh, Son of Late Rajendra Singh Resident of Village- Shreepur
Nawada, P.S. Pakaridayal, Distt. East Champaran

... .. Petitioner... ..Decree Holder

Versus

1. Janardan Raut Son of Late Budhu Raut Resident of Village- Shreepur
Nawada, P.S. Pakaridayal, Distt. East Champaran
2. Yogendra Raut Son of Budhu Raut Resident of Village- Shreepur Nawada,
P.S. Pakaridayal, Distt. East Champaran
3. Ramesh Raut Son of Dukhharan Raut Resident of Village- Shreepur Nawada,
P.S. Pakaridayal, Distt. East Champaran
4. Nagendra Raut, Son of Prasad Raut Resident of Village- Shreepur Nawada,
P.S. Pakaridayal, Distt. East Champaran
5. Bhaharan Raut, Son of Late Ram Saran Raut Resident of Village- Shreepur
Nawada, P.S. Pakaridayal, Distt. East Champaran
6. (A) Vakil Raut, Son of late Ramdeo Raut, Resident of Village- Shreepur
Nawada, P.S. Pakaridayal, Distt. East Champaran
7. Shail Devi W/o Makhan Raut Resident of Village- Shreepur Nawada, P.S.
Pakaridayal, Distt. East Champaran
8. Shyam Sunder Singh, Son of Late Vindhyachal Singh Resident of Village-
Shreepur Nawada, P.S. Pakaridayal, Distt. East Champaran
9. (A) Saroj Singh, Son of Late Ajay Singh Resident of Village- Shreepur
Nawada, P.S. Pakaridayal, Distt. East Champaran
10. Most. Umarawati Kuwar w/o late Chirkut Kuwar Resident of Village-
Shreepur Nawada, P.S. Pakaridayal, Distt. East Champaran
11. Pravesh Raut, Son of Late Chirkut Raut Resident of Village- Shreepur
Nawada, P.S. Pakaridayal, Distt. East Champaran
12. Dinesh Raut, Son of Late Chirkut Raut Resident of Village- Shreepur
Nawada, P.S. Pakaridayal, Distt. East Champaran
13. Anita Devi D/o Late Chirkut Raut Resident of Village- Shreepur Nawada, P.S.
Pakaridayal, Distt. East Champaran
14. Sitawa Devi D/o Late Chirkut Raut Resident of Village- Shreepur Nawada,
P.S. Pakaridayal, Distt. East Champaran
15. Dukh Haven Choudhary, Son of Late Ram Narayan Choudhary Resident of
Village- Teosa, P.S. Madhuban Distt. E. Champaran
16. Subodh Singh, Son of Raj Kishore Singh Resident of Village- Dhenuwaha,
P.S. Madhuban Distt. E. Champaran
17. Most, Pramila Devi w/o Late Kapildeo Singh Resident of Village- Sorpaniya,
P.S. Dhaka, Distt. E. Champaran
18. Nirmala Devi W/o Amarendra Singh Resident of Village-Bara Shankar P.S.
Pathi, Distt. E. Champaran
19. Most. Sandesh Devi, Wife of Late Jaradhan Singh Resident of Village-Bara
Shankar P.S. Pathi, Distt. E. Champaran
20. Beena Devi w/o Prem Thakuar, Resident of Village- Baisahan, P.S. Chakia,
Distt. E. Champaran

... .. Opposite Parties-Judgment Debtors

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Appearance :



For the Petitioner/s : Mr. Dhannjay Kumar No 2
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 12-09-2018

Heard the learned counsel for the petitioner and the learned counsel for the opposite party no. 8. Other opposite parties have not appeared in spite of notice.

2. The petitioner has filed this civil revision petition against the order dated 12.03.2014, passed in Execution Case No. 02 of 2014 by learned Munsif, Sikrahana by which the learned Munsif dismissed the execution case of the petitioner holding that no decree for recovery of possession was passed and, therefore, the executing court can not execute and give delivery of possession to the decree holder in the execution case.

3. The plaintiff filed Title Suit No. 212 of 1989 for declaration of his title over the land of Khesra No. 2376, Khata No. 653, Area 2 Katha. The suit was dismissed. The petitioner filed title appeal before the District Judge, Motihari and the learned 4th Additional District Judge, Motihari allowed the appeal and declared the title of the petitioner. The Petitioner filed execution case stating therein that he has been dispossessed from the suit properties after the dismissal of the suit and, therefore, he filed the execution case when his appeal was allowed for delivery



of possession but the learned Munsif by the impugned order dismissed the execution case holding that if no relief with regard to delivery possession is sought for, the executing court has got no jurisdiction to pass order for delivery of possession.

3. Learned counsel for the petitioner submits that under Order XXI, Rule 10, even if no relief with regard to delivery of possession is sought for and the suit is allowed, the executing court has got power to direct delivery of possession and the learned counsel for the petitioner placed reliance in the case of *Mst. Ramsundari Devi v. Satban Singh and others*, reported in 1985 *PLJR* 71. It is further submitted that a Division Bench of this court has also held in the case of *Atal Behary Acharya v. Barada Prasad Banerji*, reported in *AIR 1931 Patna 179* that if there is no prayer for delivery of possession either in the plaint or in the decree, the executing court is not debarred from giving possession of the suit property to the plaintiff. On the other hand the learned counsel for the opposite party no. 2 submits that if in the judgment and decree the delivery of possession is not sought for, in the execution case, no order for delivery of possession can be passed but, I find no reason to accept the submission of the learned counsel for the opposite party no. 8. Admittedly the petitioner filed suit for declaration of title on Plot No. 2376 of Khata No. 653 but the suit



was dismissed. The petitioner was dispossessed but the appeal preferred by the petitioner was allowed and the appellate court declared the title of the petitioner over the land. A Division Bench of this court in the case of *Atal Behary Acharya* (supra) has held that the court is vested with the power to order for delivery of possession in the execution case even if the delivery of possession has not been sought for in the suit.

4. In this view of the fact, I find that the learned Munsif has committed jurisdictional error as he has not exercised the jurisdiction vested in him by law by dismissing the execution case. Accordingly, the order dated 12.03.2014 passed by learned Munsif, Sikrahana in Execution Case No. 02 of 2014 is set aside. The matter is remitted to the learned Munsif, Sikrahana to pass order in accordance with law. Accordingly, this Civil Revision Petition is allowed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.09.2018
Transmission Date	NA

