

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18255 of 2014

Sidhnath Pandey & Anr

... .. Petitioner/s

Versus

Rabindranath Singh & Ors

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanat Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Nagendra Rai, Advocate
		Mr. Koshalendra Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT

Date : 30-11-2018

Petitioners are Decree-holder in Execution Case No.02 of 2010 and opposite party in Miscellaneous Case No.06 of 2014, pending in the Court of Munsif, Gopalganj. They have filed this writ application for quashing the order dated 23.07.2014 whereunder the court below admitted the miscellaneous case for hearing.

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

3. Petitioners before this court filed a suit for redemption of mortgage dated 19.06.2014 against the defendants, who are respondent nos.2 to 14 before this court. The defendants contested the claim of plaintiffs and the suit was dismissed. Thereafter the petitioners filed appeal before the District Judge which after hearing was allowed and the suit was decreed. Thereafter the



defendants filed Second Appeal No.04 of 2009 before this court which after hearing was dismissed. These petitioners then filed Execution Case No.02 of 2010 for executing the said decree. The respondent no.1 filed petition under Order 21 Rule 97 and 99 of CPC contending therein that his grandfather Yasodanand Singh had purchased the disputed land after paying a consideration of Rs.451/- as per unregistered sale deed on 05.05.1931 and his ancestor was put in possession over the same. The ancestor of respondent no.1 came in possession over the same and presently the said land is in possession of respondent no.1. The learned court below considering the resistance of respondent no.1 on the strength of purchase by his ancestor as well as his possession over the disputed property registered Miscellaneous Case No.06 of 2014 and directed for issuance of notice against the petitioners. The respondent no.1 has obstructed the decree and is claiming his exclusive possession over the land in question. It is well settled that when a person claiming title to the property in his possession obstructs the attempt by the decree holder to dispossess him from the suit property, the Executing Court is competent to consider all the questions raised by the person offering obstruction against execution of the decree and pass appropriate order. In this view of the matter I find that there is no illegality in the order of the



Executing Court directing to hold enquiry into the claim/objection raised by the respondent.

4. This writ application is accordingly dismissed and the court below is directed to expedite the hearing of Miscellaneous Case No.06 of 2014 and dispose of the case preferably within three months from the date of communication of this order.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.12.2018
Transmission Date	

