

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10252 of 2014

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Arun Kumar Singh, son of Shri Rajeshwar Pasad Singh, resident of village-Karjan
(Suryapura) P.S. Athmalgola, P.O. Athamalgola, District-Patna

.... Petitioner/s

Versus

1. Parasnath Mahto, son of Mahadeo Mahato, resident of Mohallah-Bahari
Begampur Kadamtal, P.S. Chowk Kala Patna City, District-Patna

.... Respondent-Ist set (Decree holder)

2. Dina Mahto,

3. Umesh Mahto, sons of Jhameli Mahato

4. Dilip Mahto, all are residents of Mohalla-Biruachak, P.S.Khajekala, Patna City,
District-Patna

(Respondent 2nd set)

(Judgement Debtor)

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Appearance :

For the Petitioner/s : Mr. Narendra Kumar, Advocate

Mr. Prakash Ranjan Sinha

For the Respondent/s : Mr. Hari Shankar Rai, Advocate

Mr. Satyendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 28-08-2018

This application has been filed for quashing the order dated
14.05.2014 passed by Sub Judge-I, Patna City in Miscellaneous Case
No.07 of 2014 whereby and whereunder petition filed by this
petitioner under Order 21 Rule 97 read with Section 151 CPC was
dismissed.

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

3. It appears that the respondent no.1 filed Title Suit
No.126 of 2007 against Ram Dulari Devi, the mother of respondent
nos.2 to 4 for specific performance of contract with respect to land



measuring 18 kathas 10 dhurs of plot no.1299 of Khata No.195 as mentioned in schedule given at the foot of the plaint. The respondent/plaintiff has asserted that the land in question originally belonged to Ramphal Mahto who was full brother of Smt. Ram Dulari Devi defendant no.1. The said Ramphal Mahto out of love and affection executed a registered deed of will in favour of Ram Dulari Devi on 05.12.1980. The said Ramphal Mahto died on 20.12.1982 leaving behind his sister Ram Dulari Devi who came in possession over the plot described in the will in question. She being owner of said property entered into an agreement with respondent no.1 to sell the disputed land for a total consideration of Rs.2,50,000/- and executed an agreement on 21.01.1993 in his favour and the document was witnessed by her sons. The respondent no.1 on the refusal defendant no.1 to execute sale deed, filed the aforesaid suit for specific performance of contract. The defendants did not appear and the suit was decreed ex-parte against the defendants as per order dated 20.02.2009. It further appears that the defendant no.1 Smt. Ram Dulari Devi filed a probate case no.32 of 1993 on the file of District Judge which after hearing was allowed as per order dated 11.01.1996. The respondent no.1 on the strength of ex-parte decree passed in Title Suit No.126 of 2007 filed Execution Case No.04 of 2009. This petitioner appeared and filed a petition under Order 21 Rule 97 and



Section 151 of CPC praying therein to declare his title over the said land and not to execute decree on the basis of ex-parte judgment. The claim of the petitioner is that the land measuring 18 kathas and 10 dhurs was acquired by Ramphal Mahto in the name of his wife and after the death of his wife Ramphal Mahto became absolute owner He sold the entire land of plot no.1299 to Ramjee Mahto by virtue of two registered sale deeds dated 12.04.1982 and 13.04.1982 and put him in possession over the said land. In due course, he sold the same to Ganesh Dutt Shakari Grih Nirman Samiti Ltd. by virtue of registered sale deed dated 31.03.1983. The petitioner claims to have purchased the disputed land from the purchasers of said Ganesh Dutt Shakari Grih Nirman Samiti Ltd by virtue of registered sale deeds. The purchasers from Ganesh Dutt Shakari Grih Nirman Samiti Ltd in due course transferred their land in favour of this petitioner by virtue of registered sale deed dated 15.10.2008, 02.01.2009, 21.05.2008, 06.07.2009 and on the strength of aforesaid sale deeds, he filed the petition under 21 Rule 97 before the executing court for adjudication of his right and title which was dismissed as per impugned order.

4. After hearing both the sides and on going through the documents on record, I find that the said Ganesh Dutt Shakari Grih Nirman Samiti Ltd filed an application vide Miscellaneous Case No.01 of 1998 before probate court for revocation of probate granted



in favour of Smt. Ram Dulari Devi, the mother of respondent nos.2 to 4. The said Miscellaneous Case No.01 of 1998 filed by Ganesh Dutt Shakari Grih Nirman Samiti Ltd was dismissed on 06.04.2009. The said order was not challenged in any higher court and so the probate granted in favour of mother of respondent nos.2 to 4 is final. It further appears that the ex-parte decree passed in Title Suit No.196 of 2007 is also final as the Miscellaneous Case No.07 of 2009 filed by the defendants under Order IX Rule 13 CPC for setting aside the ex-parte decree has also been dismissed. The respondent nos.2 to 4 filed Miscellaneous Appeal No.699 of 2013 which was also dismissed by this Court as per order dated 23.02.2017. The vendor of this petitioner purchased the land from Ganesh Dutt Shakari Grih Nirman Samiti Ltd during the pendency of Miscellaneous Case No.01 of 1998 which was filed for revocation of order granting probate in favour of his mother of respondent nos.2 to 4 so in view of provision of Order 21 Rule 102, the petitioner being transferee pendetillite is not entitled to any protection under Order 21 Rule 97 of CPC. The Ganesh Dutt Shakari Grih Nirman Samiti Ltd, from whom the petitioner claims title has already lost litigation in Miscellaneous Case No.01 of 1998 which was filed by him for revocation probate. The learned court below has not discussed of these facts in detail but the conclusion arrived by the court below is based on material on record. I do not find any



jurisdictional error in refusing to entertain the application filed under
Section 21 Rule 97 of CPC.

5. In view of above discussions, I find and hold that this
application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	31.08.2018
Transmission Date	N/A

