

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.2326 of 2015

- =====
1. Surendra Sah @ Surendra Sao
  2. Bramhdeo Sah

Both 1 and 2 are sons of Late Ram Chandra Sah, Resident of Chakai Bazar P.O. and P.S. Chakai, District Jamui.

.... .... Petitioners

Versus

1. Jay Prakash Sah
2. Deo Nandan Sah
3. Sri Ram Sah

Sons of Late Bhagwan Sah @ Bhago Sah, resident of Chakai Bazar, P.S. Chakai, District Jamui.

4. Dasrath Sah son of Late Sridhar Sah
5. Krishna Baldeo Sah son of Late Sridhar Sah
6. Putul Devi wife of Late Ram Lakhan Sah
7. Bajrang Sah son of Late Ram Lakhan Sah

Residents of Chakai, P.O. and P.S. Chakai, District Jamui.

8. Bachhu Sah
9. Arjun Sah

Sons of Late Gopal Sah

10. Usha Devi wife of Late Ram Chandra Sah and daughter in law of Late Gopal Sah

All 8 to 10 are resident of village P.O. and P.S. Chakia, District Jamui. Presently at P.O. Kumar Dubbi, Dhanbad.

11. Ramavtar Sah
12. Sabitri Devi
13. Raj Kumari
14. Lalo Devi

15. Hiramani Devi

All son and daughters of Late Lodha Sah @ Akhileshwar Sah

16. Basant Sah Gunga son of Late Nakat Sah

R/o Chakai Bazar, P.O. + P.S. Chakai, Distt. - Jamui.

17. Pradeep Sah
18. Bijai Sah
19. Sunil Sah

Sons of Late Jagdish Sah

20. Parmeshwar Sah son of Late Thakur Sah

Residents of Chakia Bazar, P.O. and P.S. Chakai, District Jamui.

- 21(i) Radha Ballabh Bajpayee, Son of Late Thakur Bajpayee, Resident of Village-Lagma, P.O.+P.S. and District- Jamui.

(ii) Ranjeet Ballabh Bajpayee, Son of Late Thakur Bajpayee, Resident of Village-Lagma, P.O.+P.S. and District- Jamui.

(iii) Sidharth Bajpayee son of Late Thakur Bajpayee, Resident of Village- Lagma, P.O.+P.S. and District- Jamui.

22. Bhagwan Sah
23. Ramesh Sah
24. Nabal Sah

25. Indradeo Sah @ Batal Sah, sons of Late Sitaram Sah



- 26 (i) Ravindra Sah  
(ii) Nand Kishore Sah,  
(iii) Birendra Sah, ,  
(iv) Rajesh Sah,

All sons of Late Ram Sewak Sah, Resident of Chakai Bazar, P.O. & P.S.- Chakai, District- Jamui.

- 27(i) Sri Kant Sah  
(ii) Awadh Kishore Sah  
(iii)Om Prakash Sah,

All sons of Late Sahdeo Sah and Resident of Chakai Bazar, P.O.+P.S.- Chakai, District- Jamui.

28. Shankar Sah

29. Bir Chand Sah

Both are sons of Late Natho Sah, resident of Chakai Bazar, P.O. and P.S. Chakai, District Jamui.

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Bishwa Nath Choudhary, Advocate  
For the Respondent/s : Mr. Bhubneshwar Prasad, Advocate  
Mr. Sanjay Kumar Mishra, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

**ORAL JUDGMENT**

**Date: 18-09-2018**

Petitioners have filed this writ application for quashing the order dated 23.05.2013 passed by learned Subordinate Judge I, Jamui in Execution Case No.1A of 2001. The learned court below as per impugned order held that the execution case filed by the petitioners is not sustainable. The court below recalled the order whereunder a Survey Knowing Pleader Commissioner was appointed and after accepting the objection of judgment debtors dropped the proceeding of Execution Case No.1A of 2001.

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



3. The father of petitioners filed a Title Suit No.15 of 1990 for declaration of his title and recovery of possession over the land measuring 1 ½ decimals as mentioned in Schedule I of the plaint. The suit was decreed on contest in following term:-

“The plaintiff’s title over an area of 2 decimals of plot no.1271 is hereby declared and the defendants 1<sup>st</sup> party are hereby directed to give vacant possession of an area of one and half decimals to the plaintiff within a period of three months, failing which, the plaintiff shall be at liberty to recover possession through the process of law at the cost of the defendants.”

4. The defendants filed Title Appeal No.15 of 2000 on the file of learned District Judge, Jamui which after hearing was dismissed by learned Additional District Judge (F.T.C II), Jamui on 11.05.2011. Thereafter the defendants 1<sup>st</sup> party-judgment debtors preferred Second Appeal No.379 of 2011 which after hearing both sides was also dismissed. The decree-holders filed execution case before the court below for getting delivery of possession over the suit land. The court below appointed a Survey Knowing Pleader Commissioner for demarcating the land for the purpose of effecting decree. The judgment-debtors filed an objection petition as regards maintainability of the execution. The matter was heard and the learned court below dropped the execution case.

5. The learned counsel for the judgment debtors (respondents) submitted that the original plaintiff Ram Chandra Sah



died and so the heirs of Ram Chandra Sah have no legal right to execute the decree. Another contention is that some of the defendants were dead at the time of trial and the judgment in question has been passed against dead persons and so the decree is nullity in the eyes of law and it cannot be executed.

6. The learned counsel for the petitioners, on the other hand, submitted that the main contesting parties were defendants 1<sup>st</sup> party and the judgment and decree was passed in their presence. The other defendants, who either did not contest or support the case of the plaintiff, have not filed the appeal. The contesting defendants 1<sup>st</sup> party filed first appeal and second appeal but no objection as regards nullity was raised before the appellate court. The judgment-debtors filed objection before the court below where also they did not disclose the name of any person who was allegedly dead at the time of trial. It was further submitted that the learned court below without any objection from any party has recalled the order of appointment of Survey Knowing Pleader Commissioner. The said order recalling the appointment of Survey Knowing Pleader Commissioner as well as dropping the execution case is legally not sustainable and is fit to be quashed.

7. On going through the submissions of both sides and documents on record, I find that the judgment-debtors, who were



contesting defendants, filed first appeal and second appeal and both appeals were dismissed. The points raised by the judgment-debtors were considered by both the appellate courts. The present petitioners being legal heirs have filed the execution case and there is no impediment in getting the decree executed. On perusal of decree, it appears that the plaintiff had sought relief for declaration of his title over 2 decimals of plot no.1271 and to appoint a Survey Knowing Pleader Commissioner for measurement and demarcating the land which has been encroached by the judgment-debtors and for getting delivery of possession after removing structure from the disputed land. The learned court below had rightly appointed a Survey Knowing Pleader Commissioner as per relief granted to the petitioners. The judgment-debtors have not challenged the said order appointing a Survey Knowing Pleader Commissioner for demarcation of land. The court below recalled the said order *suo motu* and dropped the proceeding by a non-speaking order. There was no occasion for the court below to recall the order of appointment of Advocate Commissioner.

8. In view of above discussions, I find that the points raised by the judgment-debtors are not sustainable. The court below has committed error in dropping the proceeding of execution case. The impugned order passed by the court below is, therefore, quashed and



the matter is remitted to the court below with a direction to execute the decree as per the relief granted by the trial court and confirmed upto this court.

9. This writ application is accordingly allowed.

**(Sanjay Kumar, J)**

Harish/-

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