

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 174 of 2018

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Smt. Shanti Lata Ghosh

.... Appellant/s

Versus

Smt. Pushpa Shee

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Kishore Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

4 21-02-2018

Heard both sides.

The petitioner judgement debtor is aggrieved by the order dated 13.11.2017 passed in Misc. Case No. 01 of 2017 by the Execution Munsif, Gaya in Execution Case No. 06 of 2016. The petitioner/ judgement debtor filed an objection under Section 47 of the C.P.C in the eviction suit being Eviction Suit No. 12 of 1998/ 42 of 1996 in the Court of Munsif 1st Gaya filed by plaintiff-respondent/ decree holder. The description of the property was given in scheduled 'A' of the plaint as disputed passage under the tenancy of defendant but the decree holder filed execution case giving a different descriptions of the suit premises as the shop/room in place of disputed passage and, therefore, the eviction suit is fit to be dismissed.

The decree holder after filing of the petition of the petitioner under Section 47 of the Code of Civil Procedure filed



petition on 27.03.2017 for amendment of the description of the property mentioned in schedule 'A' of the Execution petition but the same amendment petition was kept pending and the petition of the petitioner has been rejected solely on the ground that the judgement debtor has filed petition to delay the execution of the case.

Sri J.K. Verma, learned counsel for the petitioner, submits that mere comparison to the decree given in the plaint as well as in the execution petition it would appear that in the execution petition the decree holder has given a different description of the property as shop/room instead of disputed passage. It is submitted that the decree holder has already filed an amendment petition to correct that mistake and therefore the learned Munsif should have disposed of the petition of the petitioner, after disposal of the amendment petition of the decree holder filed on 27.03.2017, pending for amendment of description the property in schedule 'A' of the execution petition.

I find substance in the submission of learned counsel for the petitioner that on mere comparison of the description to the property mentioned in schedule 'A' of the plaint and schedule 'A' of the execution petition it would appear that description of different property has been given. The word



disputed passage is mentioned in the schedule 'A' of the plaint whereas the shop/room is mentioned in schedule 'A' of the execution petition. Therefore, I find that for that correction the decree holder has already filed amendment petition and if the amendment is allowed the petition of the petitioner filed under Section 47 of the C.P.C would have automatically become infructuous.

Considering the facts and circumstances, I find that the learned Munsif has committed jurisdictional error in rejecting the petition of the petitioner. Accordingly, the order dated 13.11.2017 is set aside. The matter is remitted to the learned Execution Munsif, Gaya to dispose of the case of the petitioner after disposal of amendment petition filed by the decree holder on 27.03.2017.

This Civil Misc. petition is accordingly allowed.

(Prabhat Kumar Jha, J)

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