

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1034 of 2017

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1. Smt. Rajpati Devi, Wife of Ram Yatan Prasad, Resident of Village/Mohalla- Nagarnausa, P.S.- Nagarnausa, District- Nalanda.

.... Appellant/s

Versus

1. Sudarshan Prasad, Son of Yadunandan Prasad, Resident of Village/Mohalla- Nagarnausa, P.S.- Nagarnausa, District- Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

2 05-10-2018 Heard Mr. Rajendra Prasad, the learned senior
counsel for the petitioner.

The petitioner has filed this Civil Misc. petition against the order dated 21.04.2017 passed in Title Suit No. 14 of 1994 by which the petition of the petitioner for issuance of summons to legal heirs of defendant No.1 to admit the execution of sale deed dated 20.01.1993 before the Sub Registrar, Hilsa has been rejected.

The admitted facts relevant for disposal of this Civil Misc. petition is that the petitioner filed Title Suit No. 14 of 1994 for specific performance of contract for direction to the defendant No.1 to get the sale deed dated 20.01.1993 executed in favour of plaintiff after receiving the entire balance consideration amount.



The suit was decreed ex parte. The defendant No.1 filed Misc. Case No. 13 of 1998 under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex parte judgement and decree but the same was dismissed vide order dated 27.08.1999. The defendants preferred Misc. Appeal No. 23 of 1999 before the learned District Judge and the learned District Judge also dismissed the Misc. Appeal on 25.08.2000 holding that defendants had received notice but they knowingly did not appear in the suit. Against the order of learned District Judge passed in Misc. Appeal No. 23 of 1999 the defendants filed C. R. No. 2189 of 2000 and 2196 of 2000 before this court and Both the Civil Revision petitions were heard together and were dismissed vide order dated 31.08.2006 but thereafter Shiv Nandan Mahto, original defendant No.1, died in the year 2007 leaving behind his widow, Shyampati Devi. Shyampati Devi also died. The decree holder filed petition along with judgement and decree before the learned Munsif for issuance of summons to the legal heirs of defendant but the learned Munsif dismissed the petition holding that after judgement and decree passed in Title Suit No. 14 of 1994 no notice is required to be issued to the legal heirs of defendant in the suit itself. The decree holder should have filed execution case for execution of judgement and decree passed in Title Suit No. 14 of



1994.

The learned senior counsel for the petitioner submits that even after disposal of the Title Suit the court has got jurisdiction under Section 151 of the Code of Civil Procedure to summon the legal heirs of defendant/ judgement debtor to admit the execution of the sale deed dated 20.01.1993 but I do not find any force in the submission of learned senior counsel for the petitioner and the submission cannot be accepted. The only way out to get the judgement and decree executed is to file execution case.

Having considered the facts aforesaid, I find no merit in this Civil Misc. petition and the same is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

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