

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1069 of 2016

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1. Hira Paswan Son of Late Mahabir Paswan, Resident of Mohalla-
Chuwabagh, Police Station- Kasim Bazar, P.O. and District- Munger.

.... Appellant/s

Versus

1. Bimla Gond Son of Nathu Ram Gond.

2. Surendra Kumar Gond.

Both sons of Nathu Ram Gond. All resident of Mohalla- Chumabagh,
Police Station- Kasim Bazar, P.O. and District- Munger.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjeev Ranjan

For the Respondent/s : Mr. Harshwardhan Sahay, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

7 19-01-2018

Heard both sides.

The petitioner has filed this Civil Misc. petition under Article 227 of the Constitution of India for setting aside the order dated 13.07.2016 passed in Title Execution Case No. 10 of 2010.

The petitioner is judgement debtor of Title Suit No. 129 of 2000. The plaintiffs/ judgement holder filed the suit for declaration of right, title and interest of the plaintiffs to the extent of $\frac{2}{3}^{\text{rd}}$ share of the suit property and thereafter by appointing survey knowing Pleader Commissioner a separate patti to the extent of share of the plaintiffs be carved out and plaintiffs be put in possession through process of the court. The plaintiffs described the suit property with survey plot and boundary in schedule-1 of the plaint as one Katha and four dhur equivalent to 32 decimals of land. The survey plot No. is Tauji No. 1069/1446 within Munger municipality, ward No.24, holding No. 258, new holding No.



34(old), which bounded as follows:-

“North- Maqsuspur
South- Garbhu Choudhary
East - Most. Jani
West- Ganesho”

The suit was dismissed but in appeal the suit was decreed setting aside the order of the trial court and holding that the plaintiffs are entitled to get $2/3^{\text{rd}}$ share in the aforesaid plot by virtue of sale deed executed by land owner. Admittedly, the defendant-judgement debtor also purchased eight dhur of land in the aforesaid plot from the western side from the land lord.

The executing court issued writ for delivery of possession and appointed survey knowing Pleader Commissioner to carve out $2/3^{\text{rd}}$ share in the plot but the Nazir and the Pleader Commissioner reported that the plot mentioned in the schedule of the plaint is not ascertainable and the decree cannot be executed. The decree holder filed petition stating therein that if the disputed land is duly identified the Nazir can give delivery of possession to the decree holder. On such, the learned executing court again issued writ to Nazir to hand over the possession of the disputed land in view of the fact that the land is duly described in the schedule of the plaint as per requirement of Order VII Rule 3 of the Code of Civil Procedure. Being aggrieved by the aforesaid order, the petitioner filed this Civil Misc. petition.

The learned counsel for the petitioner submits that from the description of land mentioned in schedule-1 of the plaint, the land cannot be identified and ascertained by Nazir. It is further submitted that total area of the plot, holding No. 258 new holding No. 34 (old) is one Katha four dhur. Even the plaintiffs admitted that the defendant purchased eight dhur land from western side of



the aforesaid plot through the sale deed executed by the original landlord in favour of defendant. The decree holder purchased the entire one katha four dhur land from the legal heirs of original landlord on 24.10.1998 and 28.10.1998. The learned counsel for the petitioner submits that legal heirs of original landlord, from whom the defendant purchased eight dhur of land in the year 1983, has got no title to execute the sale deed with regard to entire area of the aforesaid plot. Admittedly, the plaintiffs have wrongly described the boundary of the land in the plaint. The plaintiffs should have shown the name of defendant/ judgement debtor in the western boundary of the land purchased by plaintiffs. Therefore, the judgement and decree requires to be corrected.

The learned counsel for the respondents/ decree holder very fairly submitted that wrong description of the boundary was given in the plaint. Therefore, he may be allowed to file petition for correction in the judgement and decree under Section 47 read with Section 152 of the Code of Civil Procedure before the executing court.

It appears that the learned executing court has re-issued writ holding that in view of provision under Order VII Rule 3 of the Code of Civil Procedure the area of land can be ascertained by its boundary.

Order VII Rule 3 of the Code of Civil Procedure says where the subject-matter of suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case, such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. Rule 3 of order VII prescribed that the plaintiff shall in all distinctive term



mention the plot or the subject matter of suit if the same is immovable property with survey plot No. and the boundary of the immovable property but from perusal of the schedule of the plaint, it appears that plaintiffs have wrongly mentioned the boundary of the land and unless the same is corrected the land cannot be ascertained or identified. Therefore, I find that the learned executing court has committed illegality in again issuing writ for delivery of possession of the immovable property mentioned in plaint of the suit or in the judgment and decree.

Accordingly, the order dated 13.07.2016 is set aside. The executing court shall consider if any petition is filed by the plaintiffs/ judgement holder for correction in the schedule of the plaint in order to identify the land. The executing court shall firstly pass order on such petition before issuing writ for delivery of possession.

This Civil Misc. petition is allowed with the aforesaid observation.

(Prabhat Kumar Jha, J)

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