

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.107 of 2017

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1. Nasarullah Khan @ Feku Son of Late Amanullah Khan Resident of Mohalla Mobarak Ganj, Sasaram, at present residing at Mohalla Chhota Sheikhpura, P.O. & P.S. Sasaram, District Rohtas.

.... Petitioner/s

Versus

1. Rama Shankar Rungata Son of Late Murari Lal Rungata Resident of Mohalla Kazipura, P.O. & P.S. Sasaram, District Rohtas.
2. Ashok Kumar Dubey Son of Radhey Shyam Dubey Resident of Mohalla Dubauli, P.O. Indrapuri, P.S. Nawadih, District Rohtas at present residing at Mohalla Mahajan Toli, P.O. & P.S. Sasaram, District Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

7 04-07-2018 This Civil Revision petition is placed under the heading for orders on petition. The O.Ps. filed I.A. No.8702 of 2017 for vacating the stay of Execution case granted by this court on 30.08.2017.

With the consent of both the parties, this Civil Revision petition itself is disposed of.

Heard both sides.

The petitioner filed this Civil Revision petition against the order dated 02.05.2017, passed in Misc. Case No.22 of 2013 by which, learned Sub Judge-IV, Sasaram (Rohtas) dismissed the petition on the ground that the petitioner filed petition under



Section 148A and not under Order 21 Rule 97 and 98 of the C.P.C. although prayer has been made for declaration of title.

Learned counsel for the petitioner submits that the petition of the petitioner is dismissed without hearing the petition. Once a petition for declaration of title is filed in execution case under Order 21 Rule 97 and 98 of the C.P.C., the same should have been disposed of under Order 21 Rule 101 of the C.P.C. but the petition of the petitioner has been dismissed without hearing.

Learned counsel for the O.P. No.1 submits that the petitioner has got no right title over the land in dispute. The petitioner filed frivolous petition for declaration of title and the court below has rightly disposed of the same.

It appears from the perusal of the order itself that the petitioner filed petition under Order 148(A) of the C.P.C. but the prayer has been made for declaration of title and petitioner resisted the delivery of possession. It appears that wrong sections have been mentioned. The petition should have been under Order 21 Rule 97 and 98 of the C.P.C. Once a petition under Order 21 Rule 97 and 98 of the C.P.C is filed, the Executing Court is bound to decide the same on merit after hearing both sides. Therefore, I find that learned Sub Judge-IV, Sasaram (Rohtas) has committed jurisdictional error in dismissing the petition of the petitioner.



Accordingly, the order dated 02.05.2017 is set aside with direction to the Sub Judge-IV, Sasaram, Rohtas to decide the petition of the petitioner in accordance with law within three months from the date of receipt of this order.

Accordingly, this Civil Revision is allowed.

(Prabhat Kumar Jha, J)

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