

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1356 of 2016**

Ujjwal Kumar @ Ujjwal Chauhan Son of Late Parma Nand Thakur Resident of Mohalla- Tikiapara, P.S.- East Colony, P.O.- Jamalpur, District- Munger, Formerly Resident of Mohalla- Rampur Bhikhari, Gandhi Chowk, Neelam Road, Near Swami Vivekanand School, P.S.- Kotwali, District- Munger.

... .. Petitioner/Defendant

Versus

1. Bipin Kumar Kuswaha son of Sri Nageshwar Mandal Resident of Mohalla- Maksuspur Bara, P.S.- Kasim Bazar, District- Munger.
... ..Respondent/Plaintiff 1st Set
2. Vivek Kumar Son of Late Parma Nand Thakur Resident of Mohalla- Rampur Bhikhari, Gandhi Chowk, Neelam Road, Near Swami Vivekanand School, P.S.- Kotwali, District- Munger.

... .. Respondent/Defendant 2nd Set

Appearance :

For the Appellant/s : Mr. Soni Shrivastava
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER**

3 26-10-2018 Heard the learned counsel for the petitioner and the learned counsel for the respondents.

Petitioner is the judgment debtor. Petitioner filed this civil miscellaneous petition against the order dated 15.09.2016, passed by the learned Sub-Judge-II, Munger in Title Execution Case No.01 of 2015 by which the petition of the petitioner for recall of the order dated 11.12.2015, passed in Title Execution Case No.01 of 2015 fixing the execution case for ex-parte hearing has been dismissed.

The learned counsel for the petitioner submits that the petitioner filed the petition only to recall the order dated



11.12.2015 so that the petitioner being the judgment debtor may contest the execution case on any legal ground and oppose the execution of the judgment and decree on valid ground permissible to the judgment debtor but the learned Sub-Judge has illegally rejected the petition of the petitioner. On the other hand, Sri Yogendra Prasad Sinha, the learned counsel appearing on behalf of the decree holder-respondents submits that Title Suit No.98 of 2010 was decided ex-parte. The petitioner filed Misc. Case No.02 of 2015 under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex-parte judgment and decree but Misc. Case No.02 of 2015 has already been dismissed on account of non-prosecution. The judgment and decree has to be executed according to the law and the petitioner cannot object the execution of the decree merely because notice was not served on him in accordance with law. That question is beyond the consideration of the executing court. That question can be decided only in miscellaneous case which has already been dismissed.

Having considered the facts and submissions of both sides, I find that the petitioner filed the petition on 22.01.2016 only to recall the order dated 11.12.2015, passed in Title Execution Case No.01 of 2015 by which the Title Execution



Case No.01 of 2015 was fixed for ex-parte hearing. The petitioner is entitled to object the execution case on valid ground even if the judgment and decree is passed ex-parte. The execution case cannot be decided ex-parte without hearing the judgment debtor once the judgment debtor appears and wishes to contest the execution case, therefore, I find that the learned Sub-Judge has committed jurisdictional error in rejecting the petition of the petitioner for recalling the order fixing the execution case for ex-parte hearing. Consequently the order dated 15.09.2016, passed in Title Execution Case No.01 of 2015 is set aside and the petitioner is permitted to contest the execution case in accordance with law.

The civil miscellaneous petition is allowed accordingly.

(Prabhat Kumar Jha, J)

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