

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.247 of 2018

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1. Jagat Lal Rai, S/o Late Ram Chalittar Rai, Resident of Village- Motipur,
P.S.- Tajpur, District- Samastipur.

.... Petitioner

Versus

1. Surendra Kumar Rai, S/o Anandi Rai, Resident of Village- Motipur,
P.S.- Tajpur, District- Samastipur.
2. Shivchandra Rai, S/o Late Gyan Chand Rai, Resident of Village-
Motipur, P.S.- Tajpur, District- Samastipur.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Rakesh Chandra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 14-08-2018 Heard Mr. Rakesh Chandra, learned counsel for the
petitioner and Mr. Keshav Pd. Srivastava, learned senior counsel
appearing on behalf of the respondent no.1, the decree holder.

Nobody appears on behalf of respondent no.2.

Mr. Keshav Prasad Srivastava, learned senior counsel
appearing on behalf of respondent no.1 pointed out that vide order
dated 23.02.2018, notice was issued to the respondent no.1 on the
submission of learned counsel for the petitioner that his petition
filed under Order 21 Rule 97 is dismissed but in fact the same is
pending.

The mistake crept in the order dated 23.02.2018 stands
corrected.



The petitioner has filed this Civil Miscellaneous petition against the order dated 15.01.2018 passed by learned Sub-Judge-V, Samastipur in Execution Case No.02/2017 by which the petition of the petitioner for stay of Execution Case No.02/2017 during the pendency of the Misc. Case No.57/2017 has been rejected.

The facts in brief is that the respondent no.1 filed Title Suit No.09/2009 for declaration of title and recovery of possession against respondent no.2 as the respondent no.2 had taken the lands and house situated thereon on rent but the suit was decreed. The respondent no.1, the decree holder filed Execution Case No.2/2017, during the process of delivery of possession, the petitioner found that delivery of his land situated just north to the suit property was to be handed over to the decree holder and on such the petitioner filed petition under Order 21 Rule 97 of the C.P.C., which was numbered as Misc. Case No.57/2017 and the same is pending for disposal before the executing court. The petitioner immediately thereafter filed petition for stay of the Execution Case No.2/2017 during the pendency of Misc. Case No.57/2017. By the impugned order, the learned Sub-Judge-V, Samastipur has rejected the petition of the petitioner. It is submitted that the petitioner has got every right to resist the



delivery of possession of his own land bearing Khata No.1723 and if the execution case is not stayed, his petition filed under Order 21 Rule 97 read with Section 101 of the C.P.C. shall become infructuous.

Mr. Keshav Pd. Srivastava, learned senior counsel appearing on behalf of respondent, on the other hand submitted that the petitioner should not be treated as stranger of the suit. The petitioner deposed in the suit as a witness of the defendant and admitted the fact that the land is situated north to the land of the decree holder, the respondent no.1. It is further submitted that the petitioner has not come to this court with clean hand and many facts have been concealed. Therefore, the petitioner is not entitled to get any relief and the learned Sub-Judge-V, Samastipur has rightly dismissed the petition of the petitioner for stay of the execution case.

Having considered the submission of both sides, I find that admittedly the petitioner is not a party to the suit filed by the decree holder, the respondent no.1. The plaintiff filed the suit for declaration of title and recovery of possession against respondent no.2. The suit was decreed. The petitioner also deposed in the suit and stated that his land is situated north to the land purchased by the plaintiff, decree holder but by this fact, it cannot be construed



that the petitioner was aware of the fact that some area of his land bearing Plot No.1723 which is situated north to the suit plot is amalgamated in the suit plot no.1720. When the court staff came to deliver the possession in pursuance of the execution of decree, the petitioner came to know about the fact that his land which is in his possession, delivery of possession of that land is also to be handed over to the plaintiff, the decree holder, consequently he objected the delivery of possession and filed petition under Order 21 Rule 97 of the C.P.C. being Misc. Case No.57/2017. It is also admitted fact that the delivery of possession of 1 katha 8 dhur have already been given to the decree holder but if the delivery of possession with regard to remaining 3 and quarter dhur is handed over to the decree holder, it will cause injustice to the petitioner, who is found in possession over the land. Therefore, in my view, unless the petition of the petitioner filed under Order 21 Rule 97 CPC is disposed of, learned Sub Judge should have stayed the Execution Case No.2/2017. Accordingly, I find that the order dated 15.01.2018 passed in Execution Case No.02/2017 suffers from illegality and not sustainable.

Consequently, the order dated 15.01.2018 is set aside and the Civil Miscellaneous petition is allowed. The Execution Case No.2/2017 is stayed till the disposal of Misc. Case



No.57/2017.

Learned Executing court is directed to dispose of Misc.
Case No.57/2017 preferably within four months from the date of
receipt of this order.

(Prabhat Kumar Jha, J)

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