

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.72 of 2015

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1. Ramchandra Prasad, Son of Late Harihar Prasad, Resident of Village -
Salempur, P.S. - Tariyani, District - Sheohar.

.... Petitioner

Versus

1. Bhola Prasad Son of Late Harihar Prasad,
2. Laxman Prasad Son of Late Harihar Prasad, Both resident of Village-
Salempur, P.S. - Tariyani, District - Sheohar.
3. Ganga Prasad Son of Late Harihar Prasad, Resident of Village -
Salempur, P.S. - Tariyani, District - Sheohar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

13 26-09-2018

Heard learned counsel for the petitioner.

The petitioner has filed this civil revision against the order dated 26.03.2015 passed by Sub-Judge-1, Sheohar in Execution Case No.1/2013.

The admitted facts are that one Ganga Prasad filed Partition Suit No.66/2014. Harihar Prasad, Bhola Prasad, Ramchandra Prasad and Laxman Prasad are the Opposite Parties No. 1 to 4 respectively. The suit was decreed on compromise and all the five plaintiffs and defendants have got one share in the suit property. In the compromise petition itself it is stated that the lands were allotted in the share of the respective parties and all the parties are in possession of their allotted share. After disposal of Partition Suit No.66/2014 on the basis of compromise,



Ramchandra Prasad, defendant no.3 filed Execution Case No.1/2013 for allotment of the lands mentioned in Schedule-4 for the plaint and for possession over the lands mentioned in Schedule-4 of the plaint. The plaintiffs and other defendants appeared and filed rejoinder that execution case is not maintainable in view of compromise petition filed by the plaintiffs and the defendants in Partition Suit No.66/2014. The plaintiffs and defendants have very categorically stated in the compromise petition itself that they are in peaceful possession over the lands allotted in their respective share. Therefore, there is no question for handing over the possession of any land to defendant no.3 and the Court found that the execution case is not maintainable in view of assertion made in compromise petition that plaintiffs and defendants have been coming in peaceful possession over the lands allotted in their respective share.

Learned counsel for the petitioner submits that the Court should have passed order for delivery of possession. Bhola Prasad was given plot no.2283 measuring 0.24 acre from East, which was 'Makan May Sahan' and defendant no.4 Laxman Prasad was also given plot no.2283 measuring 0.04 ½ acre of homestead land from West. The petitioner was also given a portion of plot no.2283 measuring 0.02 ½ acre, plot no.2284



measuring 0.14 ½ acre and plot no.2285 measuring 0.07 acre but these lands are joint, therefore, the Court should have appointed Survey Knowing Pleader Commissioner and demarcate the lands allotted in the share of petitioner and other defendants but it appears from perusal of the order itself that learned Sub-Judge has considered the averments made in the compromise petition on the basis of which partition suit was decreed on compromise that the plaintiffs and all four defendants have categorically stated that the plot numbers and area allotted in every schedule of the plaint and compromise petition and they have stated that they are in possession over the lands allotted to their respective share. Therefore, no question arises to execute the decree and deliver possession of land. After disposal of partition suit on compromise and averments of the parties that they are in peaceful possession over the lands allotted in their share. The petitioner never claimed that after compromise he has been dispossessed from any part of the land.

Having considered the facts aforesaid, I find no jurisdictional error, and thus, the Civil Revision petition is dismissed.

(Prabhat Kumar Jha, J)

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