

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.966 of 2018

=====

1. Bibi Aisha Begum, W/o Late Syed Zaffar Husnain @ Lal Babu,
2. Syed Iftexhar Ahmad @ Saheb,
3. Syed Imteyaz Ahmad @ Chhhotey, both Sons of Late Syed Zaffar Husnain @ Lal Babu, All residents of Mohalla Gyan Babu Chowk, P.O. & P.S.- Motihari Town, District- East Champaran.
4. Bibi Shahjahan Begum, D/o Late Syed Zaffar Husnain @ Lal Babu, W/o Syed Md. Hassan @ Chand Babu, Resident of Village- Mathurapur, P.S.- Turkaulia, District- East Champaran, At present Chand College, Jauwad Colony, P.S.- Banjariya, District- East Champaran.

.... Petitioner/s

Versus

1. Bibi Shahnaz Begum, D/o Late Syed Zaffar Husnain @ Lal Babu, W/o Jamil Akhtar @ Jawed, Resident of Mohalla- Bucher Toli, P.S.- Town Motihari, P.O.- Motihari, District- East Champaran, At present Mohalla- Bajaj Patti, Near Nawyuvak Pustakalay, Main Road, P.S.- Town Motihari, District- East Champaran.
2. Bibi Shamima Khatoon, W/o Shafique Ahmad, Resident of Mohalla- Miscoot Motihari, District- East Champaran, At present Humdard Dawakhana, Unani Medical Store, Main Road, P.S.- Town Motihari, District- East Champaran.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Bal Bhushan Choudhary
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 01-11-2018

The petitioners filed this civil miscellaneous petition against the order dated 11.05.2018 passed by Subordinate Judge I, Motihari in Execution Case No.44 of 2016 by which the learned Subordinate Judge dismissed the petition of the petitioners raising objection about the maintainability of the execution case.

The petitioners are judgment debtors. The plaintiff-respondent No.1-decree holder filed Partition Suit No.399 of 1985.



The suit was preliminary decreed. The petitioners filed First Appeal No.333 of 1992 against the judgment and decree passed in Partition Suit No.399 of 1985. During the pendency of the First Appeal No.333 of 1992, the plaintiff took steps for preparation of final decree and ultimately final decree was prepared in favour of the plaintiff against which the present judgment debtors preferred First Appeal in the High Court being First Appeal No.69 of 2013. Both appeals viz. First Appeal No.333 of 1992(against preliminary decree) and First Appeal No.69 of 2013(against final decree) are admitted for hearing. During the pendency of the First Appeal No.333 of 1992, the decree holder filed petition under Order XL Rule 1 C.P.C. for appointment of receiver and this Court allowed the prayer of the decree holder and appointed Syed Imteyaz Ahmad @ Chhotey, appellate No.3 in appeal as receiver but later on, the decree holder filed petition to appoint new receiver to look after the suit properties but the same was rejected. Decree holder preferred S.L.P. being Civil Appeal No.8352 of 2011(arising out of S.L.P.(c) No.17235 of 2009) and the Hon'ble Supreme Court by order dated 28th September, 2011 appointed Syed Iftexhar Ahmad as receiver of the entire properties on the same terms and conditions on which Syed Imteyaz Ahmad @ Chhotey was appointed receiver and since then the appellant No.2, Syed Iftexhar Ahmad is in-charge of the suit property as receiver. The judgment



debtors-petitioners filed an application under Order XLI Rule 5 C.P.C. before the High Court in First Appeal No.69 of 2013 which was registered as I.A. No.594 of 2017. The High Court after hearing both the parties passed final order on 13.11.2017 by which prayer for stay of the execution case was partly allowed so far the same relates to the disputed residential and commercial properties but no stay was granted with regard to agricultural properties. The decree holder again filed petition for execution of decree and delivery of possession with regard to the agricultural land. The judgment debtors filed objections that since the Hon'ble Supreme Court has appointed receiver on the entire properties, therefore, delivery of possession cannot be effected at the instance of the decree holder even with regard to the agricultural land. Learned Sub Judge after hearing both sides rejected the objections of the judgment debtors by order dated 11.05.2018 holding that the receiver is merely an officer or agent of the Court for the safe custody and management of the property during the pendency of the litigation and the receiver is appointed until the delivery of the judgment. The Executing Court further held that Patna High Court held vide order dated 13.11.2017 passed in I.A. No.594 of 2017 in First Appeal No.69 of 2013 that the execution case with regard to the delivery of possession of agricultural land shall continue, therefore, the delivery of possession with regard to agricultural land cannot be



stayed till the pendency of the appeal or during the period of appointment of receiver. Learned Executing Court further held that decree holder raised objection about the nature of the land on the basis of the note of memo of inspection of Advocate Commissioner but it has been held that the Commissioner in its report dated 03.04.2012 has stated that if there arises any dispute between the allotment schedule and batwara map, the allotment schedule will prevail and note of memo of inspection is merely a rough work done by the Pleader Commissioner on the spot but the Pleader Commissioner himself given the nature of the land in the allotment schedule and valuation chart, therefore, the lands of Khata No.127, Khesra No.3253(P), Khata No.66 Khesra No.3(P), Khata No.549 Khesra No.79 and Khesra No.640 Khesra No.470(P) shall be treated to be agricultural land. Being aggrieved by the aforesaid order, the petitioners-judgment debtors filed this petition.

Mr. R.K.P. Singh, learned counsel for the petitioners submits that a receiver has been appointed by the Apex Court to look after the entire disputed properties. Even the High Court while disposing of I.A. No.594 of 2017 filed in First Appeal No.69 of 2013 stayed the execution case and delivery of possession with regard to the residential and commercial lands. The Executing Court did not ascertain the nature of the land for which delivery of possession has



been issued and the Executing Court, therefore, committed illegality and jurisdictional error.

On the contrary, Mr. Rajendra Narain, learned senior counsel for the decree holders submitted that the order itself is self-explanatory. After delivery of the judgment and decree, the delivery of possession cannot be stayed till the discharge of receiver. The appointment of receiver shall be co-terminous with the execution of decree and delivery of possession to the decree holder. The judgment debtors made abortive attempt to stay the execution of decree on the pretext of appointment of receiver. It is further submitted that petitioners also filed I.A. No.594 of 2017 in First Appeal No.69 of 2013 arising out of judgment and decree passed in Partition Suit No.399 of 1985 and the High Court vide order dated 13.11.2017 stayed the execution case with regard to the residential and commercial plots but categorically recorded finding that the execution with regard to the delivery of possession of agricultural land cannot be stayed and, therefore, in view of the finding of this Court, learned Executing Court has passed legal and right order and this civil miscellaneous petition is devoid of merit.

On hearing submissions of both sides and on consideration of the facts, it is admitted fact that decree holder filed Partition Suit No.399 of 1985. The suit was preliminary decreed holding that the



plaintiff-decree holder is entitled to get share in the lands mentioned in the schedule of the plaint. The judgment debtors filed appeal against the preliminary decree. The final decree was also prepared and the judgment debtors filed First Appeal No.69 of 2013 against the final decree. During the pendency of both appeals, the judgment debtors filed petition for appointment of receiver and the appellant No.3 was appointed as receiver but later on, decree holder complained about misappropriation and non-submission of accounts by the receiver and prayed for appointment of new receiver but the High Court dismissed the petition. The decree holder moved before the Supreme Court in Civil Appeal No.8352 of 2011(arising out of S.L.P.(c) No.17235 of 2009). Hon'ble Supreme Court appointed appellant No.2 of the First Appeal-judgment debtors as receiver to look after the properties. Thereafter, the decree holder filed execution for delivery of possession. The appellants-judgment debtors filed petition being I.A. No.594 of 2017 for stay of the execution case but this High Court vide order dated 13.11.2017 stayed the execution case so far as the same relates to the delivery of possession of residential and commercial lands but directed the Executing Court to proceed further with regard to the agricultural land. In pursuance thereof, the Executing Court moved forward but the judgment debtors again filed objection about the maintainability of the execution case and resisted



the delivery of possession with regard to the agricultural land to the decree holder on the ground that so long as the receiver is appointed, delivery of possession cannot be effected. I find that the receiver is appointed to look after the property and the moment the delivery of possession is handed over to the decree holder, the receiver shall be deemed to have been discharged. Learned Sub Judge has also rejected the objection of the judgment debtors on this ground and also held that on the basis of the allotment chart made by the Pleader Commissioner, the lands for which delivery of possession is issued are agricultural land and the High Court by order dated 13.11.2017 directed to effect the delivery of possession with regard to the agricultural land. Thus, I find no illegality or jurisdictional error in the order impugned. Accordingly, this civil miscellaneous petition is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	06.11.2018
Transmission Date	06.11.2018

