

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24174 of 2013

Tilak Raj Pahuja S/O Late Laxmi Narayan Pahuja @ Pitamber Pahuja
Resident Of Mohalla- Marwari Bazar Thakurwari Gali, Ward No. 17, (New),
P.S- Town, District- Samastipur.

... .. Petitioner/s

Versus

1. Smt. Ishwari Devi W/O Bhojraj Pahuja Resident Of Mohalla- Marwari Bazar Ward No. 17 (New), P.S Town District- Samastipur.
2. Smt. Usha Devi W/O Yushisthir Raj Pahuja Resident Of Mohalla- Marwari Bazar Ward No. 17 (New), P.S Town District- Samastipur.
3. Bhojraj Pahuja S/O Late Shankar Das Pahuja Resident Of Mohalla- Marwari Bazar Ward No. 17 (New), P.S Town District- Samastipur.
4. Yudhisthir Raj Pahuja S/O Late Shankar Das Pahuja Resident Of Mohalla- Marwari Bazar Ward No. 17 (New), P.S Town District- Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bhavesh Kumar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date : 20-11-2018

This writ application has been filed for quashing the order dated 17.08.2013 passed by the learned Munsif-II, Samastipur in Title Execution Case No.05 of 2012 whereby and whereunder the learned court below stayed the proceeding of Title Execution Case No.05 of 2012.

2. Heard learned counsel for the petitioner. Nobody appeared for the respondents.

3. The petitioner and his brothers filed Redemption Suit No.28 of 2002 in the court of Munsif-II, Samastipur which was decreed on 10.05.2005 and the respondents were directed to deposit all the six conditional sale deeds with duly endorsement of payment within a stipulated period and hand over possession of the land and house to the petitioner. The said order was not complied



with and the petitioner filed Execution Case No.05 of 2012 for executing the said decree. The respondents on getting knowledge about the ex-parte decree passed in Redemption Suit No.28 of 2002, filed Miscellaneous Case No.05 of 2012 under Order 9 Rule 13 read with Section 151 CPC for setting aside the ex-parte decree. The respondents further filed a petition on 02.02.2013 to stay the execution proceeding against which the petitioner filed rejoinder and the court below after hearing both sides stayed the further proceeding of Execution Case till the disposal of Miscellaneous Case No.05 of 2012 vide order dated 17.08.2013. The main objection of the petitioner is that the learned court below who had decreed the redemption suit had no jurisdiction to stay the execution case. It is only the superior court who has jurisdiction to stay the proceeding of the court below.

4. On perusal of impugned order and documents on record, I find that the suit filed by the petitioner was heard and decreed ex-parte in absence of the respondents. The respondents filed Miscellaneous Case No.05 of 2012 under Order 9 Rule 13 CPC to set aside the ex-parte decree and a petition praying therein to say the proceeding of execution case. The court below allowed the petition observing that the order of Miscellaneous Case would affect the orders of execution case. In this regard, I would like to



refer a decision of this Court in Dinanath alias Dinanath Prasad vrs. Sukhdei Devi reported in 1963 BLJR page-Lii in which it has been held that the rejection of prayer made by the defendant for a stay of the delivery of possession of the house pending disposal of the application under Order 9, Rule 13 for setting aside the ex-parte decree for redemption passed against him amounts to misdirection. In the case in hand, I find that the respondents are in possession of the land and house and if the Miscellaneous Case filed under Section 9 rule 13 succeeds, the ex-parte decree, for redemption passed against the respondents will be set aside and in that event, the defendants will be entitled to remain in possession until another decree for redemption is passed against them.

5. In view of above discussions, I do not find any jurisdictional error in staying the proceeding of Execution Case till the disposal of Miscellaneous case. This writ application is being devoid of merit is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29.11.2018
Transmission Date	

