

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1127 of 2017

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1. Mubarak Hussain @ Md. Mubarak Hussain, son of Late Refakat Hussain, resident of Village- Chainpur Dhaka, P.S.- Dhaka, District- East Champaran.

.... Petitioner/s

Versus

1. Most. Sahida Khatoon, wife of Late Amir Hussain.
2. Sk. Kazim, son of Late Amir Hussain
3. Sk. Nazim, son of Late Amir Hussain All residents of Village- Dhaka Ramchandra, Tola Chainpur, P.O. & P.S.- Dhaka, District- East Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binod Kumar Mishra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

3 11-10-2018 Heard both sides.

The petitioner filed this civil miscellaneous petition against the order dated 06.06.2017 passed by learned Munsif, Sikarahana, Motihari in Execution Case No.6 of 2014 whereby and whereunder the learned Munsif dismissed the petition of the petitioner and directed to issue delivery of possession in favour of decree holder after depositing writ materials.

The brief facts which is relevant can be summarised as follows:

Petitioner is the judgment debtor. Respondents filed Eviction Suit No.3 of 2006 with respect to Plot No.2718, Khata No.51, area 3 katha. The suit was decreed. The petitioner filed



Eviction Appeal No.22 of 2014 and the same was also dismissed on 30.07.2016 and the Second Appeal No.573 of 2016 is pending. The decree holder filed Execution Case No.6 of 2014 for execution of the judgment and decree passed in Eviction Suit No.3 of 2006.

The Executing Court vide order dated 23.05.2015 issued delivery of possession under Order XXI Rule 35 C.P.C. fixing 31.05.2015 for delivery of possession but the judgment debtor filed a petition on 26.05.2015 to stop the proceeding of delivery of possession on the ground that the petitioner was running saw mill on the suit premises and the Forest Department has seized and sealed the saw mill. Learned Executing Court vide order dated 26.05.2015 recalled the order of delivery of possession and fixed the case for hearing till the disposal of petition filed by the petitioner on 26.05.2015. The Executing Court after hearing both sides dismissed the petition of the petitioner for stay of delivery of possession and directed the decree holder to submit the requisites for issuance of delivery of possession.

Learned counsel for the petitioner assailed the order impugned dated 06.06.2017 on the ground that the Executing Court vide order dated 26.05.2015 recalled his own order for delivery of possession till the disposal of the petition of the



petitioner for stay of the delivery of possession but the learned Court did not record the order by which learned Court had already recalled the order of delivery of possession. I do not find any force in the submission of the learned counsel for the petitioner. It appears that the petition of the petitioner dated 26.05.2015 was dismissed by the Court as the Court did not find any reason to stay the execution case. The petitioner has occupied the land of the decree holder and established saw mill. The license of the saw mill expired and thereafter the Forest Department sealed the saw mill of the petitioner but on this ground, the order of eviction cannot be stayed. Learned Munsif has ordered for appointment of Pleader Commissioner at the cost of the decree holder to ascertain the fixtures available on the suit premises so that the delivery of possession can be issued. Thus, I find no illegality or jurisdictional error in the order as learned Munsif has already dismissed the petition dated 26.05.2015 of the petitioner.

Having considered the facts aforesaid, I do not find any merit in this civil miscellaneous petition. Accordingly, this civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

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