

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.187 of 2018

Lallan Prasad Gupta, son of Late Bihari Lal Gupta, resident of Thatheri Bazar, Dumraon, P.O. & P.S. Dumraon, District- Buxar.

... .. Petitioner

Versus

1.Dumraon Properties Enterprises (Private Limited) through The Secretary, Prakash Narayan Singh, presently resident of village, P.O. & P.S. Dumraon, District- Buxar.

2. Lakhan Prasad Gupta, Son of Late Bihari Lal Gupta.

3. Ganpat Prasad Gupta, son of late Bihari Lal Gupta.

4. Bhola Prasad Gupta, son of Late Bihari Lal Gupta

5. Jai Prakash gupta, son of late Bihari Lal Gupta.

6. Aarti Devi, wife of Binod Prasad Gupta.

7. Bimla Devi, wife of Kanahiya Prasad Gupta.

8. Ashok Kumar Gupta, son of Kanahiya Prasad Gupta.

9. Meera Devi, wife of Ishwar Dayal.

10. Rita Devi, wife of Manoj Kumar.

11. Lakshman Prasad Gupta.

12. Raj Kumar Gupta.

13. Mithilesh Kumar.

All son of Late Jagarnath Prasad

14. Prabhawati Devi, wife of Rambabhu.

15. Shaanti Devi, wife of Mohan Prasad.

16. Lalbabu Gupta, son of Mohan Prasad.

17. Gayatri Devi, wife of Mohan Prasad.

All residents of Thatheri Bazar, Dumraon, P.O. & P.S. Dumraon, District- Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s :	Mr. Shashi Shekhar Dwivedi, Sr.Adv.
	Mr.Parth Gaurav, Adv.
	Mr. Anshu Raj Singh, Adv.
	Mr. S.Shankar, Adv.



For the Respondent/s: Mr. Dr. Kamal Deo Sharma, Adv.
Mr. Tushar Vaibhav, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 29-04-2019

Heard the parties.

2. This civil revision has been filed for setting aside the order dated 11.10.2018 passed by learned Munsif, Dumraon in Misc. Case No. 25 of 2017 filed under Section 47 of the Code of Civil Procedure.

3. Opposite party no.1 (decree holder) filed Title Suit No. 32 of 1980 in the Court of Additional Munsif, Buxar seeking eviction of the father of the petitioner from suit premises as detailed in scheduled A of the plaint. Initially eviction suit was filed for eviction as plaintiff claimed to be landlord and defendant tenant and on default of payment of rent and repair of suit premises as well as personal necessity eviction was sought, however, defendant in W.S. claimed title over the suit land and thereafter plaint was amended for declaration of title of plaintiff over the suit property and want of title of defendant and eviction suit was converted into title suit and trial court in its judgment and decree dated 23.02.1991 decreed the suit and declared the right, title and interest of



plaintiff over the suit land and directed defendants to vacate suit premises. Defendant/petitioner never raised lack of pecuniary jurisdiction and proper valuation of suit before the trial court.

4. Against the judgment and decree of trial court defendant/petitioner filed First Appeal in the court of District Judge and judgment and decree of trial court was set aside and the matter was remanded for determination of valuation of suit. Plaintiff/opposite party challenged the remand order in High Court in Miscellaneous Appeal which was allowed on 29.07.2004 and the order of remand was set aside and the 1st appellate court was directed to decide the appeal on merit including issue of valuation of suit. Said order of High Court was not challenged by defendant and thereafter plaintiff amended the plaint with respect to suit valuation which was allowed by 1st appellate court on 29.08.2005 and valuation of suit was amended as Rs. 50,000/- and ad volerum court fee was paid. The 1st appellate court dismissed the appeal against which defendant/petitioner filed 2nd appeal in the High Court which was also dismissed on 29.02.2012. S.L.P. filed against judgment and order of High Court was dismissed in limine and thereafter Review petition and rectification petition filed by



defendant were also dismissed and the judgment and decree of the trial court attained finality.

5. Decree holder-opposite party no.1 filed Execution Case no. 04 of 1991 in the Court of Munsif at Dumraon. However, same remained stayed due to pendency of cases at appellate stages.

6. A petition dated 02.02.2013 was filed by the decree holder-opposite party no.1 for issuance of writ for delivery of possession. Petitioner filed an application under Section 47 of the Code of Civil Procedure that the decree is unexecutable as description of property is not sufficient to identify the property and as such no delivery of possession could be effectuated. However, same was dismissed by the Executing Court by order dated 15.07.2017 which was challenged by the judgment debtor/petitioner by filing Civil Revision No. 193 of 2017 and the order was set aside by the High Court by its order dated 22.11.2017 and matter was remanded for registering a Miscellaneous Case under Section 47 of the Code of Civil Procedure and thereafter Misc. Case No. 25 of 2017 was registered on the petition filed under Section 47 of the Code of Civil Procedure by the petitioner. Plea was taken by the petitioner that the execution case was



beyond the pecuniary jurisdiction of the executing court as although initially the suit was filed before Additional Munsif where suit value was within pecuniary jurisdiction of Munsif, however, at the appellate stage by way of amendment the valuation of the suit was raised to Rs. 50,000/-, as such, the suit value is beyond the pecuniary jurisdiction of execution munsif, as such, the execution case cannot be permitted to proceed.

7. Defendant/judgment debtor have filed petition under Section 47 of Code of Civil Procedure in Execution Case No. 05 of 1991 giving rise to Misc. Case No. 25 of 2017 primarily on the ground that the decree is vague and ambiguous and the suit property is not identifiable as such decree cannot be executed nor delivery of possession can be effectuated. Defendant judgment debtor had themselves filed suit for declaration of their title over the suit land, which is subject of present execution proceeding, as such they cannot take a plea that the suit property is not identifiable as their Title Suit No. 220 of 2014 for declaration of their title and confirmation of possession over present suit property has been dismissed by the trial court as such their plea that decree is vague, nullity, indefinite and unexecutable cannot be accepted.



8. Altogether nine witnesses were examined on behalf of judgment debtor/petitioner and one witness was examined on behalf of decree holder/opposite party. Various documents were also filed to support the contention that the suit property is not identifiable and there is no sufficient description of the suit property as such the decree is vague and unexecutable and no delivery of possession can be effected. However, said contention of judgment debtor was rejected by executing court which found the suit premises identifiable and decree to be executable.

9. As far as pecuniary jurisdiction is concerned, the same was raised at the stage of First appeal and second appeal but their plea was rejected. Objection to pecuniary jurisdiction can be raised at initial stage of suit and same cannot be entertained at appellate stage unless it causes any prejudice and accordingly the objection of defendant/judgment debtor in respect of pecuniary jurisdiction was rejected by both the appellate courts and cannot be permitted to be raised again at execution stage as such plea of lack of pecuniary jurisdiction of executing court is rejected.

10. In execution proceedings other issues touching the merit of case were also raised but same was rightly rejected



by the Executing Court as it cannot go beyond the decree.

11. This Court does not find any error in the order dated 11.10.2018 passed by Execution Munsif, Dumraon in Misc. Case No. 25 of 2017, as such, present civil revision is dismissed.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	31.05.2019
Transmission Date	N.A

