

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.512 of 2019

1. Rajesh Mahto Son of Late Shambhu Mahto R/o Mohalla-Lal Bagh, Bhagat Singh Chowk, P.O. Lalbagh, P.S. Town, District Darbhanga, Pin Code-846004
2. Badal Mahto Son of Late Shambhu Mahto R/o Mohalla-Lal Bagh, Bhagat Singh Chowk, P.O. Lalbagh, P.S. Town, District Darbhanga, Pin Code-846004
3. Manu Mahto Son of Late Mishrilal Mahto R/o Mohalla-Lal Bagh, Bhagat Singh Chowk, P.O. Lalbagh, P.S. Town, District Darbhanga, Pin Code-846004
4. Raju Mahto Son of Late Mishrilal Mahto R/o Mohalla-Lal Bagh, Bhagat Singh Chowk, P.O. Lalbagh, P.S. Town, District Darbhanga, Pin Code-846004

... .. Petitioners

Versus

1. Satya Narayan Thakur Son of Late Boue Lal R/o Mohalla-Bajidpur, P.O. Lalbagh, P.S. Laheriasarai, District Darbhanga, Pin Code-846004
2. Smt. Saraswati Devi Wife of Satya Narayan Thakur R/o Mohalla-Bajidpur, P.O. Lalbagh, P.S. Laheriasarai, District Darbhanga, Pin Code-846004
3. Rajesh Sharma Son of Late Gaya Prasad Sharma R/o Mohalla-Bajidpur, P.O. Lalbagh, P.S. Laheriasarai, District Darbhanga, Pin Code-846004
4. Rakesh Sharma Son of Late Gaya Prasad Sharma R/o Mohalla-Bajidpur, P.O. Lalbagh, P.S. Laheriasarai, District Darbhanga, Pin Code-846004
5. Swarn Lata D/o Late Gaya Prasad Sharma R/o Mohalla-Bajidpur, P.O. Lalbagh, P.S. Laheriasarai, District Darbhanga, Pin Code-846004
6. Hemlata D/o Late Gaya Prasad Sharma R/o Mohalla-Bajidpur, P.O. Lalbagh, P.S. Laheriasarai, District Darbhanga, Pin Code-846004

...Opposite 1st Party/Respondent 1st Set.

7. Hanuman Prasad Son of Late Durga Sah R/o Mohalla-Lal Bagh, Bhagat Singh Chowk, P.O. Lalbagh, P.S. Town, District Darbhanga, Pin Code-846004
8. Shila Devi Wife of Late Rambabu Mahto R/o Village and P.O.-Baghaut, P.S. Manigachi, District-Darbhangha, Pin Code-847422
9. Barun Mahto Son of Late Rambabu Mahto minor under guardianship of his mother Shila Devi, R/o Village and P.O.-Baghaut, P.S. Manigachi, District-Darbhangha, Pin Code-847422
10. Smt. Pooja Devi D/o Late Rambabu Mahto R/o Village and P.O.-Baghaut, P.S. Manigachi, District-Darbhangha, Pin Code-847422



... .. Respondents

Appearance :

For the Petitioners : Mr. Shashi Shekhar Dwivedi, Sr. Advocate.
Mr. Parth Gaurav, Advocate
For the Respondent : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 16-08-2019

Heard Mr. Shashi Shekhar Dwivedi, learned senior counsel for the petitioners.

2. This application has been filed by the petitioners under Article 227 of the Constitution of India for setting aside the order dated 07.01.2019 passed by the learned Munsif 1st, Darbhanga in Eviction Execution Case No 3 of 1996 directing for re-issuance of delivery of possession under Order 21 Rule 35 of the Code of Civil Procedure (for short 'CPC').

3. Learned senior advocate appearing for the petitioner submitted that even if it is assumed for the sake of argument that the decree holders of Eviction Suit No. 5 of 1994 were dispossessed after getting possession thereof by judgment debtors that will amount to creating an obstruction in delivery of possession and the petition filed by the decree holders may be deemed to be an application under Order 21 Rule 19 of the CPC and such an application was clearly barred by limitation as it has been filed much beyond one year. He further contended that the



petition is also fit to be dismissed on the ground that crucial fact of filing of Title Suit No. 46 of 2013 has been suppressed by the decree holders.

4. The short facts of the case are that the respondent 1st party filed Eviction Suit No. 5 of 1994 in the court of Munsif 1st, Darbhanga seeking eviction of the petitioners and Rambabu Mahto contending inter alia that total area of the land in question is 14 dhur and 45 dhurki, which was purchased by two sale deeds dated 16.06.1986 from Janki Pasi in the names of different plaintiffs and the defendants were the tenants and they sought the decree for eviction on the ground of personal necessity. The suit was decreed on 26.09.1995. Thereafter, on 30.01.1996, Eviction Execution Case No. 3 of 1996 was filed by the decree holder. The petitioners and Rambabu Mahto having come to know about the said ex parte decree filed Misc Case No. 12 of 1996 under the provisions of Order 9 Rule 13 of the CPC for setting aside the ex parte decree. However, the said miscellaneous case was dismissed vide order dated 30.03.2001. Thereafter, a Misc. Appeal No. 8 of 2001 was filed by the judgment debtors before the District Judge, Darbhanga which was also dismissed vide order dated 01.04.2005.



5. In the meantime, execution case proceeded and vide order dated 21.02.2008, Nazir costs etc. were filed by the decree holder for the purpose of effecting delivery of possession over the disputed land. It was at that stage that one Khokia Devi filed Misc. Case No. 9 of 2008 under Order 21 Rule 19 of the CPC claiming her right, title, interest and possession over the suit land over half of the properties. She prayed for stay of execution case, but her prayer was rejected vide order dated 07.04.2010. Against the said order, Khokia Devi filed CWJC No. 13819 of 2010 before this Court.

6. In the meantime, on 14.03.2012, an order for delivery of possession to be effected in favour of the decree holders was passed by the executing court and, accordingly, with the help of police force on 22.04.2012, the Nazir delivered possession in favour of the decree holders/respondent 1st party. The Nazir submitted his report before the court on 23.04.2012. However, on 25.04.2012, the petitioners filed a petition to stay the confirmation of possession and submitted that the decree holder has not got the possession.

7. In the meantime, on the prayer of Khokia Devi, vide order dated 25.07.2012, stay order in the execution case was passed by this Court in CWJC No. 13819 of 2010.



8. The decree holders filed complaint case numbered as C.R. No. 1652 of 20125 in the court of Chief Judicial Magistrate, Darbhanga that in the night of 08.08.2012, the judgment debtors (petitioners) dispossessed them from the decreetal land of Eviction Suit No. 5 of 1994 over which they had got delivery of possession by the Nazir on 22.04.2012 under the orders of the court of Munsif 1st, Darbhanga.

9. During the pendency of complaint case, respondent nos. 1 and 2 filed Title Suit No. 46 of 2013 in the court of 1st Sub-ordinate Judge, Darbhanga seeking a decree for recovery of possession in favour of the plaintiffs and a declaration that the act of defendant 1st party dispossessing the plaintiffs is illegal. They also sought a decree for permanent injunction restraining the defendant 1st party/petitioners from making any interference in possession of the plaintiffs.

10. Subsequently, CWJC No. 13819 of 2010 in which an order of stay of execution proceeding was passed was dismissed vide order dated 20.06.2013. Thereafter, the learned Munsif, vide impugned order dated 07.01.2019, allowed the application filed by decree holder and directed for re-issuance of delivery of possession. The said order is under challenged in the instant application.



11. The operative part of the order impugned dated 07.01.2019 passed in Eviction Execution No. 3 of 1996 reads as under :-

“Heard both the sides and perused the entire case record. On perusal of the case record it transpires that the decree holder was delivered possession on 22.04.2012 and on 09.05.2012 the decree holder filed the petition that he has got possession over the suit land so the case may be disposed off. On 25.04.2012 the judgment debtor filed petition that the decree holder has not been delivered possession. Thus both the parties concede that the decree holder is not in possession of the disputed property. The Hon’ble Patna High Court has held in ruling reported in (1999) 1 PLJR page 114 that “ **There is nothing on the record to show that the report of the *Nazir* and the Pleader Commissioner regarding delivery of possession was finally accepted by the executing court and the execution case was disposed of. In such circumstances, the court below ought to have issued writ of delivery of possession in order to give full justice to the Decree Holder. If the view taken by the court below is accepted, then there will be total miscarriage of justice and such decree holder shall be deprived of the fruit of the decree at the hands of the Judgment debtor by adopting the practice of forceful dispossession after the Decree Holder, is put in possession in execution of decree.**” In this case also the Nazir’s report has not yet been



accepted and thus as per the above ruling the re-delivery of possession can be issued by the executing court. Thus the ruling cited by the Ld. Counsel for judgment debtor reported in AIR 1928 Nagpur 100 is not applied in this case.

The another contention is that whether the petition dated 04.09.2013 filed by the decree holder falls under Order 21 Rule 97 or Order 21 Rule 35 and if falls under Order 21 rule 97 whether the same is barred by limitation and if entertained whether there is need of enquiry as per Rule 459 of Civil Court Rules. The Ld. Counsel for the judgment debtor has submitted that in the ruling reported in (1999) 1 PLJR Page 114 it has been mentioned in the placitum as Order 21 Rule 97 and thus the petition falls under Order 21 rule 97 CPC. The Ld. Counsel for the decree holder has submitted that the petition does not fall under Order 21 rule 97 rather the same has been filed under Order 21 rule 35 CPC and also submitted that in the body of the ruling cited by him no where it has been mentioned that the petition for re-delivery of possession has been filed under Order 21 rule 97 rather the placitum is only the editorial's note.

Order 21 Rule 97 reads as follows:-

“97. Resistance or obstruction to possession of immovable property.- (1) Where the holder of a decree for the possession of immovable property or the purchaser or any such property sold in execution of a decree is resisted or obstructed by any person in



obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule(1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

Thus, if there was an obstruction or resistance to the execution and an application is filed then that would be treated as filed under Order 21 rule 97, but in this case the decree holder has filed petition for re-delivery of possession which falls under Order 21 rule 35 CPC. In the similar set of facts the Hon’ble Allahabad High Court has held in ruling reported in 2000 SCC Online All 605. **“Be that as it may, the character of an application is to be determined on the basis of the substance of the application and the reliefs claimed. The application that was made for issue of Parwana for delivery of possession, which can be bad under Order 21, Rule 35.”**

Thus the petition falls under Order 21 rule 35 hence the contentions and rulings filed by the judgment debtor are not applicable in this case.

Accordingly, the petition dated 04.09.2013 filed by the decree holder is allowed.”

12. It would be evident from the order impugned that the learned Munsif while allowing the application filed on behalf of decree holders has placed reliance on the judgment of



this Court in the matter of **Smt. Renu Devi vs. Amol Paswan**, since reported in **1999 (1) PLJR 114**.

13. In **Smt. Renu Devi (Supra)**, the civil revision application filed by the petitioner was directed against the order passed by the Munsif in title eviction case by which he had rejected the application filed by the petitioner for issuance of a writ of delivery of possession. In the said case, writ for effecting delivery of possession was issued and the decree holder was put in possession with the help of police and Magistrate. A few days thereafter, judgment debtor with the help of muscle men forcibly dispossessed the decree holder who again sought for issuance of writ of delivery of possession which was rejected holding that once decree holder is put in possession, the decree become satisfied and no fresh writ of delivery of possession can be issued.

14. Under the aforesaid circumstances, this Court while setting aside the order impugned passed by the learned Munsif held as under :-

“ ...There is nothing on the record to show that the report of the *Nazir* and the Pleader Commissioner regarding delivery of possession was finally accepted by the executing court and the execution case was disposed of. In such circumstances, the court below ought to have issued writ of delivery of possession in order to give full



justice to the Decree Holder. If the view taken by the court below is accepted, then there will be total miscarriage of justice and such decree holder shall be deprived of the fruit of the decree at the hands of the Judgment debtor by adopting the practice of forceful dispossession after the Decree Holder, is put in possession in execution of decree.”

15. In my considered opinion, the instant case is squarely covered by the ratio laid down by this Court in **Smt. Renu Devi (Supra)**.

16. In the instant case also, the decree holders were put in possession. The report of Nazir had not yet been accepted and, in the meantime, by use of force, the decree holders were dispossessed. In the circumstances, if the learned Munsif has again issued a decree for delivery of possession under Order 21, Rule 35 of the CPC, no illegality can be found with the order impugned.

17. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.08.2019
Transmission Date	

