

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.522 of 2019

Sri Khetreshwar Nath Mahadeojee Deity Wheelerganj gudari Bazar, Laheria sarai, P.S.-Laheria Sarai, District-Darbhanga through its Co-Sewait Shyam Kishore Goswami, Male aged about 40 Plus Years, Son of Late Laxmi Narain Goswami, resident of Mohalla-Wheelerganj, Gudari Bazar, Laheria sarai, P.O. and P.S.-Laheria Sarai, District-Darbhanga

... .. Petitioner

Versus

1. Smt. Bharti Banerjee Wife of Sri Gaur Mohan Banerjee and Daughter of Prafulla Kumar Banerjee, Resident of Narainpur, PO Jagdalpur, District-24 Pargana, Kolkata (West Bengal).
2. Nandan Kumar Son of Late Kanhaiya Prasad, Resident of Mohalla Gudari Bazar (Wheeler ganj), P.O. and P.S. Laheria Sarai, District-Darbhanga

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Durga Nand Jha, Advocate
For the Respondent	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 23-08-2019

Heard Mr. Durga Nand Jha, learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner against the order dated 05.11.2018 passed by the learned Sub-Judge-IV, Darbhanga in Misc. Case No. 53 of 2017 whereby the prayer of the petitioner to set aside the proceeding of Execution Case No. 1 of 2017/2 of 2017 has been rejected.

3. Learned counsel appearing for the petitioner submitted that pursuant to the order of this Court in Misc. Case



No. 7 of 2016, the petitioner filed an application on 08.08.2016 with a prayer to stay Pattibandi until disposal of said misc. case and also prayed for a direction to the Nazir, Civil Court, Darbhanga to return the writ of the delivery of possession forthwith. The said case, however, was rejected vide order dated 02.02.2017. Thereafter, the petitioner filed a petition under Section 151 of the Code of Civil Procedure (for short 'CPC') on 13.02.2017 contending therein that there was no provision of executing a decree in the said proceeding rather proper proceeding was within the ambit of Order 21 of the CPC which relates to the execution of the decree and prayed for stay of delivery of possession and, accordingly, the Court vide letter o. 77 of 2017 dated 03.03.2017 directed the Nazir to return back the delivery of possession without executing the same. In spite of the aforesaid facts, the opposite parties filed one Execution Case No. 1 of 2017 and order of issuing delivery of possession was passed. However, no notice as provided under Order 21, Rule 22 of the CPC had been issued, so much so the parties to the case were dead and even original record was not attached. Since final decree was prepared against the dead persons, it was not executed. Accordingly, the petitioner filed Misc. Case No. 53 of 2017 on 20.09.2017 with a prayer for setting aside the execution case no. 1 of 2017/2 of 2017



and also for setting aside the report submitted by the advocate commissioner on the grounds raised in the case. He contended that the court below without appreciating the points raised in Misc. Case No. 53 of 2017 vide impugned order dated 05.11.2018 rejected the application of the petitioner. He contended that the order impugned is unsustainable in law.

4. Having heard learned counsel for the petitioner and perused the order impugned, I find that the court below has rejected the application filed by the petitioner vide impugned order dated 05.11.2018 on the ground that he had not filed any document in support of his contentions. It also appreciated the fact that after the decree and judgment was passed, a partition Execution Case No. 1 of 2017/2 of 2017 was filed and in the execution case, after hearing the parties, the order of delivery of possession was passed. It also appreciated that after the final decree was passed, no challenge was made to the judgment and final decree.

5. A final decree can only be set aside by an appellate court and the court which has passed the decree has no jurisdiction to set it aside. Hence, the court below rightly dismissed the misc. application filed by the petitioner.



6. In my considered opinion, the order impugned passed by the court below neither suffers from want of jurisdiction nor the same is perverse.

7. In that view of the matter, I am not inclined to interfere with the same in supervisory jurisdiction under Article 227 of the Constitution of India.

8. The application stands dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.08.2019
Transmission Date	NA

