

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.531 of 2019

Shailendra Jha @ Shailendra Kumar Jha S/o Late Surendra Jha, R/o Village-Sarpaniya P.S. Dhaka, District-East Champaran at Motihari.

... .. Petitioner

Versus

Laxmi sah Son of Late Gopal jee sah, Resident of Village-Pachpakari, P.S. Dhaka District-East Champaran at Motihari.

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Yogendra Mishra, Sr. Adv. Mr. Alok Kumar Jha, Adv. Mr. Santosh Kumar Pandey, Adv.
For the Respondent/s	:	Mr. Md. Fazle Karim, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 30-08-2019

Heard learned counsel for petitioner and learned counsel for the respondent.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner challenging the order dated 15.03.2019 passed by the learned Munsif, Sikrahana, East Champaran in Execution Case No. 3 of 2015 whereby he has rejected the petition filed by the petitioner-judgment debtor under Order XXI, Rule 29 read with Section 151 of the Code of Civil Procedure (for short 'CPC').



3. It is submitted by the learned counsel for the petitioner that the learned Munsif failed to appreciate that during pendency of the eviction suit the petitioner-judgment debtor had purchased the land involved in the execution case from the original landlord through registered sale deed dated 24.11.2009 after paying valuable consideration money. He also failed to appreciate that he is coming in peaceful possession over the same since the date of purchase. He submitted that the petitioner-judgment debtor filed Title Suit No. 889 of 2014 before the court of Sub-Judge, Sikrahana, East Champaran against the decree holder for declaration of title and confirmation of possession over the land in question in the suit, which is pending before the said court for hearing. Under the circumstances, the execution case ought to have been stayed till the disposal of the aforesaid Title Suit No. 889 of 2014.

4. Mr. Md. Fazle Karim, learned counsel appearing for the respondent contested the matter. He contended that the judgment debtor had filed first appeal and second appeal against the judgment and decree of Eviction Suit No. 01 of 2008 and both were dismissed, but just in order to delay the execution proceeding, an erroneous application was filed under Order XXI, Rule 29 read with Section 151 of the CPC with a prayer to stay



the execution case till disposal of Title Suit No. 889 of 2014. He contended that there is no error in the order under challenge passed by the learned Munsif. The order is also not without jurisdiction. Hence, the same requires no interference by the Court in exercise of supervisory jurisdiction.

5. I have heard learned counsel for the parties and perused the record.

6. Eviction Suit No. 01 of 2008 was decreed in favour of the plaintiff-decree holder. Eviction Appeal No. 96 of 2014 and Second Appeal No. 24 of 2018 filed by the judgment debtor were dismissed vide orders dated 16.06.2017 and 27.11.2018. There is clear finding in the suit that there exists relationship of landlord and tenant between the decree holder and the judgment debtor.

7. Order XXI, Rule 29 of the CPC deals with stay of the execution pending suit between the decree holder and the judgment debtor. It provides that where a suit is pending in any court against the holder of a decree of such court on the part of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.



8. Thus, there should be two proceedings in one court, i.e. execution proceeding at the instance of the decree holder and the other suit at the instance of the judgment debtor.

9. In the instant case, admitted case of the petitioner-judgment debtor is that the title suit has been filed before the Sub-Judge, Sikrahana, East Chaparan whereas the eviction case has been filed before the Munsif, Sikrahana, East Champaran. While passing the order impugned, the learned Munsif has placed reliance on the decision of the Supreme Court in ***Shaukat Hussain @ Ali Akram & Ors. Vs. Smt. Bhuneshwari Devi (Dead) by Lrs. & Ors.***, since reported in ***AIR 1973 SC 528***.

10. In ***Shaukat Hussain*** (Supra), the Supreme Court, while interpreting the applicability of Order XXI, Rule 29 of the CPC, observed as under :-

“It is obvious from a mere perusal of the rule that there should be simultaneously two proceedings in one court. One is the proceeding in execution at the instance of the decree-holder against the judgment-debtor and the other a suit at the instance of the judgment-debtor against the decree-holder. That is a condition under which the court in which the suit is pending may stay the execution before it. If that was the only condition, Mr Chagla would be right in his contention, because admittedly there was a proceeding in



execution by the decree-holder against the judgment-debtor in the Court of Munsif 1st, Gaya and there was also a suit at the instance of the judgment-debtor against the decree-holder in that court. But there is a snag in that rule. **It is not enough that there is a suit pending by the judgment-debtor, it is further necessary that the suit must be against the holder of a decree of such court. The words “such court” are important. “Such court” means in the context of that rule the court in which the suit is pending. In other words, the suit must be one not only pending in that court but also one against the holder of a decree of that court.** That appears to be the plain meaning of the rule.”

(emphasis mine)

11. As noted above, in the instant case, both the suits are not in the same court. One is pending in the court of Sub-Judge whereas the other is pending in the court of Munsif. Hence, the provision prescribed under Order XXI, Rule 29 of the CPC is not applicable in the case.

12. Furthermore, it is well settled position in law that power to stay the execution case should be exercised with great care and caution. Only in special circumstance, the court, which has passed the decree, may stay its execution. The trial court has



rightly held that the instant case does not fall within the category of special case.

13. The reasons assigned by the trial court for rejecting the application filed by the petitioner-judgment debtor are well founded.

14. The application lacks merit. In that view of the matter, I see no reason to interfere with the order impugned.

15. The application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02-09-2019
Transmission Date	

