

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.580 of 2019

1. Arun Chand Das, S/o Late Nagarchand Das Resident of Mauja and P.o.-Matiyari, P.s.- Forbesganj, Distt.- Araria
2. Dinesh Chand Das S/o Late Nagarchand Das Resident of Mauja and P.o.-Matiyari, P.s.- Forbesganj, Distt.- Araria
3. Mahendra Prasad Das S/o Late Nagarchand Das Resident of Mauja and P.o.-Matiyari, P.s.- Forbesganj, Distt.- Araria
4. Upendra Das S/o Late Nagarchand Das Resident of Mauja and P.o.-Matiyari, P.s.- Forbesganj, Distt.- Araria
5. Kameshwar Das S/o Late Nagarchand Das Resident of Mauja and P.o.-Matiyari, P.s.- Forbesganj, Distt.- Araria
6. Vikram Das @ Vijay Das S/o Late Nagarchand Das Resident of Mauja and P.o.- Matiyari, P.s.- Forbesganj, Distt.- Araria
7. Suman Kumar @ Suman Kumar Das S/o Late Kiranchand Das Resident of Mauja and P.o.- Matiyari, P.s.- Forbesganj, Distt.- Araria
8. Raj Kumar Das S/o Late Kiranchand Das Resident of Mauja and P.o.-Matiyari, P.s.- Forbesganj, Distt.- Araria
9. Nirmal Kumar Das Late Bimal Chand Das Resident of Mauja and P.o.-Matiyari, P.s.- Forbesganj, Distt.- Araria
10. Pradeep Kumar Das S/o Late Bimal Chand Das Resident of Mauja and P.o.-Matiyari, P.s.- Forbesganj, Distt.- Araria

... .. Appellants/ Petitioners

Versus

1. Vijay Kumar, S/o Udai Chand Lal Vill. and P.s.- Forbesganj, distt.- Araria
2. Om Prakash Jaiswal S/o Late Krishna Bihari Pd. Jaiswal Resident of Sadar Road, Forbesganj, P.s.- Forbesganj, Distt.- Araria
3. Nand Gopal Jaiswal S/o Late Krishna Bihari Pd. Jaiswal Resident of Sadar Road, Forbesganj, P.s.- Forbesganj, Distt.- Araria
4. Ashok Kumar Jaiswal S/o Late Krishna Bihari Pd. Jaiswal Resident of Sadar Road, Forbesganj, P.s.- Forbesganj, Distt.- Araria
5. Meena Choudhary D/o Late Krishna Bihari Pd. Jaiswal W/o Sri Bharat Bhushan Choudhary, Resident of Flat No. 604, 6th Floor, Utkarsh Anuradha Apartment, Civil Lines, P.s.- Civil Lines, Distt.- Nagpur (Maharastra)
6. Gyanti Choudhary D/o Late Krishna Bihari Pd. Jaiswal W/o Anant Prasad Choudhary, Resident of Anant Kothi in front of Transformer, Road No. 23, Rajiv Nagar, P.s.- Rajiv Nagar, Distt.- Patna
7. Neelam Jaiswal D/o Late Krishna Bihari Pd. Jaiswal W/o of Badri Prasad Jaiswal, Resident of Prince Anwar Sah Road, 58/84, Near Ram Mandir, Kolkata-45
8. Sushma Kalwar D/o Krishna Bihari Pd. Jaiswal W/o Dr. Balak Prasad Jaiswal, Resident of Nahar Katiya, thana Road, P.s. Nahar Katiya, Distt.-dibrugarh (Assam)



9. Babli Jaiswal D/o Late Krishna Bihari Pd. Jaiswal W/o Sri Niraj Krishna Jaiswal, Resident of Plot No.- 16 to 19 and 21 to 25, Sector 15, Mumbai (Maharashtra)
10. Uma Prasad Choudhary S/o Late Moti Devi and Late Parmanand Choudhary Resident of Shaw Mill Gorihare Road, P.O. and P.S.- Forbesganj, Distt.- Araria
11. Phool Kumari W/o Shyam Narayan Das D/o Late Nagarchand Das, Resident of Mauja and P.O.- Matiyari, P.S.- Forbesganj, Distt.- Araria
12. Kumal Kumar Jindal S/o Late Gokhul Chand Jindal Resident of Forbesganj, New Ward No. 20, P.S.- Forbesganj, Distt.- Araria
13. Hanumanmal Sharma S/o Late Kishun Sharma Resident of Ward No. 5, P.O. and P.S.- Forbesganj, Distt.- Araria

... .. Respondents

Appearance :

For the Petitioners	:	Mr. K. N. Choubey-Sr. Advocate Mr. Ashok Kumar Garg-Advocate Mr. Yogendra Kumar Dwivedy-Advocate Mr. Dineshwar Pandey-Advocate Mr. Prashant Kumar-Advocate Mr. Animesh Kumar-Advocate
For the Respondents	:	Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

17-10-2019

Heard Mr. K. N. Choubey, learned Senior

Counsel for the petitioners.

2. He has submitted that the instant application under Article 227 of the Constitution of India has been filed by the petitioners for directing the learned Munsif, Araria to dispose of the petition filed under Order 21, Rule-97 of the Code of Civil Procedure (for short 'C.P.C.') in Title Execution Case No.01of 2005/ 04/2006 by the respondent nos.12 and 13 within reasonable period.

3. He has contended that one Arun Chand Das



had filed Title Suit No.195 of 1955 against Bijay Kumar Jaiswal for the land of Mauza-Bhag Pokhar, Khata No.113, Khesra No.470, area 2 Katha 16 dhur, with the relief of declaration of title and recovery of possession asserting dispossession since 1948. The said title suit was decreed on 16.07.1963 in part and the Court below had directed the defendants to deliver the vacant possession of suit land. Against the said decree, the plaintiff and defendants had filed Title Appeal No.255 of 1963 and 257 of 1963 respectively, in which also the appellate Court vide common judgment dated 02.05.1978 allowed the Title Appeal filed by decree holder and dismissed the title appeal filed by the respondent first set. Against the said judgment, Second Appeal Nos.355 of 1978 and 354 of 1978 were filed before this Court and the matter was remanded to the appellate Court to consider the matter afresh. Ultimately, Title Appeal No.255 of 1963 was allowed whereas Title Appeal No.257 of 1963 was dismissed against which the respondents first set filed two appeals bearing Second Appeal No.114 of 1987 and 115 of 1987 before this Court and vide judgment dated 03.02.2015, both the second appeals were dismissed by this Court. Against the dismissal of appeal, the respondent first set preferred S.L.P. No.14818 and 14819 of 2015 before the Hon'ble Supreme



Court, which were converted to S.L.P. (C) No.24302-24303 of 2015. The S.L.Ps were dismissed on 21.08.2015. Thereafter, the respondent first set filed Review Petition (C) Nos.1405-1406 of 2016 before the Hon'ble Supreme Court, which were also dismissed on 18.02.2016. The curative petition nos.293-294 of 2016 were also dismissed on 03.02.2016. After dismissal of the aforesaid cases of respondent first set, the petitioners filed Title Execution Case No.01 of 2005 on 09.08.2005 for execution of the decree dated 29.07.1963 passed in Title Appeal Nos.255 of 1963 and 257 of 1963. The execution Court after hearing the parties, vide order dated 28.10.2016, issued delivery of possession order and directed the Nazir to submit a report within a fortnight.

4. Mr. K. N. Choubey, learned Senior Counsel submitted that on the instigation of respondent first set, respondent nos.12 and 13 have filed a petition under Order-21, Rule-97 C.P.C. on 05.07.2017 before the learned Munsif, Araria and a prayer was made on their behalf for stay of further proceedings of the execution with regard to the delivery of vacant possession of the land in question. The petitioners filed their reply on 05.7.2018. However, respondent nos.12 and 13 filed Civil Misc. No.1142 of 2017 before this Court and vide



order dated 09.03.2018, this Court directed the executing Court to firstly dispose of the petition filed under Order-21, Rule-97 of C.P.C. and thereafter, dispose of Title Execution Case No.01 of 2005/ 04/2006.

5. He has contended that after receipt of the order dated 09.03.2018 passed by this Court in Civil Misc. No.1142 of 2017, the executing Court has initiated Misc. Case No.01 of 2019. In the said case, there is absolutely no progress. He has urged that even after lapse of more than one year, the application filed under Order-21, Rule-97 of the C.P.C. has not been decided. He submitted that respondent first set and the respondent nos.12 and 13 are bent upon to somehow or other obstruct the execution proceeding and prolong the matter in order to keep the petitioners away from the real fruit of the decree.

6. Keeping in mind the nature of the relief sought for by the petitioners in the present case, I do not deem it necessary to issue notices to the respondents. The application is disposed of with a direction to the learned Munsif, Araria to dispose of the petition filed under Order-21, Rule-97 of the C.P.C. in Title Execution Case No.01 of 05/ 04/2006 as early as possible, preferably within a period of four months from the



date of receipt/ production of a copy of the order.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21.10.2019
Transmission Date	21.10.2019

