

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.101 of 2016

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Smt. Abha Agrawal wife of Sri Krishna Kumar Agrawal, resident of Mohalla
Diwan Mohalla Pandaribagali, P.S. Khajekalan, P.O. Jhauganj, District Patna.

... .. Petitioner/s

Versus

1.Smt. Chanpati Devi wife of Sri Deo Sharan Singh, resident of village
Ranipur Ke Chak, P.S Chawk, District Patna.

...Plaintiff/Appellant/Decree Holder... Opposite Party

2. Smt .Nirmala Devi Wife of late Ramji Prasad, resident of Village Ilahibag,
P.S Gauri Chak PO Bairia, District Patna.

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Appearance :

For the Petitioner/s : Mr.Rabindra Kumar, Adv
For the Respondent/s : Mr.Santosh Kumar Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 18-04-2019

Heard learned counsel for the parties.

2. This civil revision petition has been filed for setting
aside the order dated 01.03.2016 passed by the Execution
Munsif, Patna in Execution Case No. 02 of 2013, whereby and
whereunder, the objection petition filed by the Judgment Debtor
No. 3 dated 14.12.2015 under Order 21 Rule XXIII of the Code
of Civil Procedure has been rejected.

3. Plaintiff/Decree Holder had filed Title Suit No. 52 of



1992 against Defendant/Judgment Debtors for declaration of their title and interest over the suit land and confirmation of their possession and if out of possession then restoration of possession over the suit land by process of court. Title Suit was dismissed against which Plaintiff-Decree Holder preferred Title Appeal which was allowed by judgment and decree dated 31.05.2005, against which Defendant/Judgment Debtor has filed second appeal which is pending for adjudication.

4. Plaintiff-decree holder filed Execution Case for execution of decree for delivery of possession of the suit land against which petitioner-judgment debtor filed an objection petition dated 14.12.2015 that since there is no decree to grant restoration of possession as such the decree is not executable and execution court cannot go behind the decree as such execution case is fit to be dismissed.

5. Learned counsel for the petitioner has relied upon a judgment and order passed by this Court in case of **Mosst. Fudni Devi & Ors vs. Chotelall Sah & Ors** since reported in **AIR 2007 Pat 41**, in which this Court has held that Execution Court has to execute the decree as it is and it cannot go beyond the decree and as no relief for restoration of possession was given in the decree, Executing Court cannot grant recovery of



possession.

6. Learned counsel for the Opposite Parties has relied upon a decision of this Court in the case of **Mosst. Ramsundari Devi & Ors vs. Satban Singh & Ors**, since reported in **1985 BLJ 71**, which is based upon a judgment of Division Bench of this Court in which it has been held that even if there is no prayer for delivery of possession either in the plaint or in the decree, the Executing Court is not debarred from granting delivery of possession of the suit property to the plaintiff.

7. In the present case, there is a prayer for delivery of possession of the suit property. Title Suit has been decreed in favour of plaintiff-decree holder and his right, title and interest has been declared by the judgment and decree and there was a prayer for restoration of possession if plaintiff are not found in possession. It is a settled proposition of law that title follows possession. Decree holder cannot be asked to file a separate suit for grant of possession against Defendant/Judgment Debtor when the Civil Court has declared want of title of Defendant-Judgment Debtor over the suit land. However, decree holder will have to pay the proper court fee before writ of delivery of possession is issued by the Executing Court.

8. This Court does not find any infirmity, or



jurisdictional error in the order passed by the Court below,
accordingly, the revision petition is dismissed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.06.2019
Transmission Date	NA

