

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1229 of 2019

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Birendra Prasad, Son of Late Nand Kishore Prasad @ Kishori Mahto,
Resident of village- Jeshour, P.S.- Rahui, District- Nalanda.

... .. Petitioner/Opposite Party

Versus

1. Md. Nasim Ahmad, Son of Late Touhid Khan, Resident of Muhalla-Baradani P.O. and P.S.-Biharsharif, District- Nalanda.

... .. Respondent 1st set/Applicant

2. Dilip Kumar, Son of Ishwari Prasad, Resident of village and P.O.- Karari P.S.- Beldhi, District-Patna.
3. Jitendra Kumar Azad, Son of Late Satish Prasad, Resident of village and P.O.- Tesour P.S.-Rahui District-Nalanda.
4. Umesh Prasad, son of Shyam Narayan, Resident of village-Etesang P.S.- Rahui, District-Nalanda.
5. Md. Nasim Ahmad, Son of Late Touhid Khan, Resident of Mohalla-Sanadari, P.O. and P.S.- Biharsharif, District- Nalanda.

... .. Respondents/Appellants 2nd set

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Appearance :

For the Advocate	:	Mr. T.N. Matin, Senior Advocate Mr. Shashi Shekhar Tiwary, Advocate
For the Respondents	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 30-08-2019

Defects pointed out by the Stamp Reporter are ignored.

2. Heard Mr. T.N. Matin, learned senior advocate for the petitioner and perused the materials on record.

3. This application under Article 227 of the Constitution of India has been filed by the petitioner against the order dated 03.08.2018 passed in Misc. Case No.29 of 2017 by the learned



Sub Judge-I, Bihar Sharif whereby he has admitted an application filed by Md. Nasim Ahmad, respondent 1st set.

4. Learned senior advocate appearing for the petitioner submitted that the order impugned passed by the learned Sub Judge is illegal and has been passed in a casual manner. An unscrupulous objector had filed the application and the same has been admitted as a result of which the execution of decree for the possession of the immovable property is being delayed for an indefinite period. According to him, the bona fide of the claim of the objector was itself doubtful. The court below ought to have appreciated the same before admitting the application filed under Order 21 Rule 97 of the Code of Civil Procedure (for short 'CPC').

5. Having heard learned senior advocate and perused the materials on record, I find that the petitioner is a decree holder with regard to Title Suit No.49 of 2005 in respect of an area of 1 Katha 2 dhurs under Afzalganj Nai Sarai, Town-Bihar Sharif, Nalanda. With a view to get the judgment and decree passed in Title Suit No.49 of 2005 executed, the petitioner preferred Execution Case No.1 of 2015. In course of the execution proceeding, Md. Nasim Ahmad filed Misc. Case No.29 of 2017 under Order 21 Rule 97 of the CPC resisting the claim of the



petitioner in obtaining possession of the property. He claimed his interest in the disputed plot. He pleaded that he is in possession having right and title in the disputed plot. On 20.05.2017 notices were issued to the petitioner in miscellaneous case. The petitioner appeared on notice and prayed that the miscellaneous petition may be dismissed. Considering the pleadings made by the respondent 1st set, vide order impugned dated 03.08.2018, the learned Sub-Judge admitted the miscellaneous case.

6. It would be relevant to note that sub-rule (1) of Order 21 Rule 97 provides that where the holder of a decree for the possession of immovable property or the purchaser of 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.

7. Further, sub-rule (2) of Order 21 Rule 97 provides that 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.

8. Rule 101 of Order 21 provides that all questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an



application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

9. Sub-rule (1) of Order 21 Rule 98 provides that upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),- (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or (b) pass such other order as, in the circumstances of the case, it may deem fit.

10. Sub-rule (2) of Order 21 Rule 98 provides that where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining



possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

11. The aforesaid provisions make it abundantly clear that if an application is filed under Order 21 Rule 97 objecting the execution of the decree, the Court is required to make a presumptive opinion about prima facie disclosure of infringement of right. At this stage, the court is not supposed to go into the correctness or otherwise of the objections raised enumerating in the petition.

12. The court below while passing the order impugned has observed that whether the petition is admissible or not, the court has to find out from the allegations made in the petition itself and not beyond it as to whether a bogus, wholly vexatious or frivolous litigation had been initiated by the petitioner. Since maintainability has broad aspects whereas admission can be made only after forming a presumptive opinion. It has rightly held that maintainability of a petition can not be decided in admission stage itself.

13. As the order passed by the court below is neither without jurisdiction nor perverse, I am not inclined to interfere



with the same in supervisory jurisdiction under Article 227 of the Constitution of India.

14. The application is dismissed.

15. The court below shall make all possible endeavour to expeditiously dispose of the miscellaneous case pending before it.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.09.2019
Transmission Date	NA

