

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.60 of 2020

Aslam Quraishi @ Md. Aslam Quraishi @ Md. Aslam S/o Late Md. Abdul Mazid Khan @ Late Abdul Mazid Khan @ Md. Mazeed Quraishi, resident of Mohalla- Chhoti Khagaul, P.O. and P.S. Khagaul, District- Patna.

... .. Petitioner/s

Versus

1. Md. Geyasuddin Kuraishi, S/o Late Gaffar Kuraishi, resident of Bari Khagaul, P.O. and P.S. Khagaul, District- Patna.
2. Md. Sarfuddin, S/o Late Jamiruddin, resident of Bari Khagaul, P.O. and P.S. Khagaul, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mahendra Prasad Bhartee, Advocate
For the Respondent/s : Mr. Tilak Sao, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 05-07-2022

Heard Mr. Mahendra Prasad Bhartee, learned counsel for the petitioner and Mr. Tilak Sao, learned counsel for the Respondents.

2. The petitioner is aggrieved by the impugned order dated 15.11.2019 passed in Execution Case No. 17/2016 by the learned Sub Judge-VI, Danapur, by which the petition filed by the petitioner dated 27.08.2019 regarding stay of the proceeding of Execution Case No.17/2016 has been dismissed.

3. The petitioner claims to be the owner of the suit property being the heir of Abdul Mazid Khan. According



to the learned counsel for the petitioner, before the death of Abdul Majid Khan, he had given *Hibba* in favour of the petitioner on 25.07.1999 and the petitioner is in continuous possession of the suit land since 1999. One of the heirs of Abdul Mazid Khan sold the suit property by way of a sale deed in favour of the Respondent No. 1, i.e. Md. Geyasuddin Kuraishi who filed Eviction Title Suit No. 5/2014 against the Respondent No. 2 (Tenant) which was decreed *ex-parte* and on the basis of *ex-parte* decree, an Execution Case No. 17/2016 has been filed by the purchaser (Respondent No. 1).

4. The contention of the petitioner is that upon execution of the *ex-parte* decree, the petitioner would be dispossessed from the suit property in which he has right, title, possession and interest. Accordingly, the petitioner filed a Misc. Case No. 44/2018 under Order 21 Rule 97, 99, 101 read with Section 151 of the Civil Procedure Code before the Executing Court which is pending. The petitioner prayed for stay of the Execution Proceeding No. 17/2016 till the disposal of Misc. Case No. 44/2018 filed by him under Order 21, Rule, 97, 99, 101 read with Section 151 CPC.



5. By the impugned order dated 15.11.2019 the Executing Court has refused to stay the Execution Case after coming to the conclusion that petitioner is neither a decree-holder nor a party in the Title Eviction Suit No. 5/2014 or in the Execution Proceeding vide Execution Case No. 17/2016.

6. Learned counsel for the petitioner submits that it is a settled principle of law that under Order 21, Rule 97, 99, 101 read with Section 151 CPC, the Executing Court is the authority to decide all the questions pertaining to right, title and interest in the property arisen between the parties and it also includes the claim of stranger who has already been dispossessed from the immovable property. In support of his argument, he relies upon a judgment of Hon'ble Supreme Court in a case of *Sameer Singh and Anr. Vrs. Abdul Rab and Ors.* reported in *(2015) 1 PLJR (SC) 64*. Learned counsel next submits that one of the contentions raised by the petitioner is that Abdul Mazid Khan has given the suit property in favour of the petitioner by *Zubani (oral) Hibba* and he is in continuous possession over the suit property which has not been controverted by the Respondent in his counter affidavit.



7. On the other hand, learned counsel for the Respondents submits that the petitioner has already filed a separate suit bearing Title Suit No. 191 of 2014.

8. Regards being had to the submissions made by the parties and taking into consideration the materials available on record and the fact that the petitioner is claiming right, title and interest over the suit property and claims to be in continuous possession over the same and Misc. Case filed by him bearing Misc. Case No. 44/2018 is still pending, accordingly, the impugned order dated 15.11.2019, passed by the learned Sub Judge-VI, Danapur, is set aside.

9. The further proceeding of Execution Case No. 17/2016 shall remained stayed till the final adjudication of Misc. Case No. 44/2018 pending before the learned court below.

10. Accordingly, this application stands disposed of.

(Anil Kumar Sinha, J)

S.Ali/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.07.2022
Transmission Date	

