

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No. 3 of 2020

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Ramchandra Sahni, Son of Ramji Sahni, ward no. 28, Mauja Rahamganj,
P.S.- Laheriasarai, P.O.- Lalbagh, District- Darbhanga.

... .. Petitioner/s

Versus

1. Ram Lakhan Sahni, son of Thakko Sahni, R/o Mauza Bakarganj, Abhanda,
P.S.- Laheriasarai, District- Darbhanga.
2. Raj Kumar Sahni, son of Thakko Sahni, R/o Mauza Bakarganj, Abhanda,
P.S.- Laheriasarai, District- Darbhanga.
3. Shiv Kumar Sahni, son of Thakko Sahni, R/o Mauza Bakarganj, Abhanda,
P.S.- Laheriasarai, District- Darbhanga.
4. Gita Devi, wife of Narayan Sahni, daughter of Late Thakko Sahni, P.O.-
Lalbagh, District- Darbhanga.
5. Rita Devi, wife of Kamalkant Mukhiya, daughter of Late Thakko Sahni, Vill
and P.O.- Bithan, P.S. and District- Samastipur.
6. Anita Devi, wife of Ram Naresh Sahni, daughter of Late Thakko Sahni,
resident of Kom lakh, P.S. and District- Darbhanga.
7. Shila Kumari, daughter of Late Thakko Sahni, resident of Bakarganj, P.S.-
Laheriasarai, District- Darbhanga.
8. Savitri Devi, wife of Ramswarup Sahni, daughter of Late Ramji Sahni,
resident of Chatriya, P.O.- Lalbagh, P.S. Bahadurpur, District- Darbhanga.
9. Urmial Devi, wife of Late Ramadhin Sahni, daughter of late Ramji Sahni,
resident of Jagdishpur, P.O. and P.S. - Hayaghat, Dist- Darbhanga.
10. Shanti Devi, wife of Ruplal Sahni, daughter of Late Ramji Sahni, resident of
Narayanpur, P.S.- Manigachi, District- Darbhanga.
11. Gauri Devi, wife of Shibu Sahni, daughter of Late Ramji Sahni, resident of
Shivaji Nagar, P.s. -Town Darbhanga, P.O. Lalbagh, District Darbhanga.
12. Raghunath Sahni, Son of Ramji Sahni, ward no. - 28, Mauja Rahamganj,
P.S.- Laheriasarai, P.O.- Lalbagh, District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Verma, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 13-12-2022

This Civil Revision has been filed under Section 115



of the Code of Civil Procedure against order dated 30.09.2019 passed by learned Munsif – 1st, Darbhanga in Miscellaneous Case No. 09 of 2016 whereby and whereunder the application filed by petitioner on 18.01.2019 under Section 151 C.P.C has been dismissed.

2. Heard learned counsel for the petitioner and perused the material on record.

3. It appears from the impugned order that the petitioner brought the miscellaneous case under Order 21 Rule 97 read with Section 151 C.P.C in pending execution Case No. 21 of 1985 (for execution of judgment and decree passed in Title Appeal No. 3/79 (12/81) stating that the report submitted by the Survey knowing Commissioner regarding the measurement of the suit land is erroneous and it has calculation mistake apparent on the face of it. The petitioner's further case is that they are in possession of 4 kattha and 13 dhur land and there is no surplus land in their possession as reported by the Commissioner. It is prayed to hand over the surplus land to the decree holder after securing 4 kattha and 13 dhur of land of petitioner. The petitioner also prayed to appoint a survey knowing Commissioner to measure the length and breadth of the suit land and issue delivery of possession after obtaining his



report.

4. Learned counsel for the petitioner submits that the learned court below failed to exercise its jurisdiction and rejected the application of the petitioner in a routine manner without application of judicial mind on the issue. He has further submitted that the court below acted interfering in 4 kattha 13 dhurs of the land in possession of the petitioner and his brother therefore, for determination of the issue as such the petition under Order 21 Rule 97 C.P.C. has been filed and subsequent further petition under Section 151 C.P.C filed but the learned court below failed to exercise its jurisdiction.

5. The learned court below in the impugned order observed that objection as to the measurement of suit land and calculation mistake on report of the survey knowing Commissioner is concerned, the same has been raised by the petitioner in paragraph 11 of the miscellaneous petition. So far as the area of the suit land, which is in possession of the applicant, is concerned the same has been raised in paragraph 12 of the miscellaneous petition. The petitioner has filed miscellaneous case opposing the delivery of possession to the decree holder on the basis of Commissioner report, which is erroneous as per the applicant and simultaneously this instant



petition dated 18.01.2019 under Section 151 C.P.C has been filed on the same ground.

6. The Court below also observed that in the present petition the applicant has prayed the delivery of possession be issued to decree holder after obtaining the fresh report from the survey knowing pleader Commissioner which is inconsistent from the prayer made in miscellaneous petition whereby the applicant has prayed to dismiss the execution case as a whole.

7. The learned Court below observed that most of the grounds raised by the applicant in the instant petition is also the subject matter of the miscellaneous petition and the same needs to be decided at the time of final disposal of the miscellaneous case. Accordingly, the said petition under Section 151 C.P.C has been dismissed.

8. The statutory provisions of Order XXI CPC lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. It is well settled that if a decree-holder is resisted or obstructed in execution of the decree of possession with the result that the decree for possession could not be executed in normal manner by obtaining warrant for possession under Order



XXI Rule 35, then the decree holder has to move an application under Order XXI Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the Court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order XXI Rule 97 sub-rule (2) read with Order XXI Rule 98.

9. Order XXI Rule 97 CPC deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder.

10. The dispute in the case relates to possession and dispossession on one katha land and the litigation is going on since earlier than 1965 and the execution case is of year 1985 which itself speaks a lot. Even armed with a decree, a litigant forced to fight the already conquered battle before the executing court. The decree holder is not being able to enjoy the fruits of litigation on account of delay caused during the process of execution of decree. The executing court is required to keep this aspect also in mind.

11. In this case the learned court below has not committed any illegality or irregularity while passing the aforesaid order as stated above that most of the grounds raised



by the petitioner in subsequent petition are also subject matter of the miscellaneous petition which needs to be decided at the time of final disposal of the Miscellaneous petition. The impugned order does not require any interference by this court in its revisional jurisdiction.

12. Thus, there is no merit in this Civil Revision and it is, accordingly, dismissed at admission stage itself with no order as to cost.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	NAFR
CAV DATE	14.09.2022
Uploading Date	14.12.2022
Transmission Date	

