

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.285 of 2018

Rajendra Rai S/o Late Ramdeo, Resident of Village-and Post-Bikrampur Bandey, P.S. and District-Samastipur, Presently Rahimpur Rudauli, Harpur Ailoth, P.S.-Harpur Aloth, District-samastipur.

... .. Petitioner/s

Versus

1. Gauri Devi W/o Prem Paswan, D/o Late Maghu Paswan, Resident of Village-Hakimabad, P.S.-Mufassil, District-samastipur.
2. Mamta Devi W/o Papu Paswan, D/o Late Maghu Paswan, Resident of Village-Bahadurpur Khajurbanni, P.S.-Mufassil, District-Samastipur.
3. Maya devi W/o Ranjeet Paswan, D/o Maghu Paswan, Resident of Village-Hakimabad, P.S.-Mufassil, District-samastipur.
4. Pariya devi W/o Suresh Paswan, Resident of Village-Rahimabad, Rudauli, P.S.-Mufassil, District-Samastipur.
5. Deep Narayan Rai, S/o ram Yatan Rai, Resident of Village-Bikrampur Bandey, P.S. and District-Samastipur, At Present resident of Village-Rahipur Rudauli, P.S.-and District-Samastipur.
6. Dhami Rai S/o Batahu Rai, Resident of Bikrampur Bandey, P.S. and District-samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Dubey
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 22-09-2022 The petitioner is aggrieved by the order dated 20-01-2018 passed by Sub- Judge- 2, Samastipur in Execution Case No. 29 / 2017 by which the learned executing court has directed the petitioner-decree holder to hand over possession of the suit property in favour of the judgment debtor.

2. Mr. Ranjan Kumar Dubey, learned counsel for the petitioner submits that the petitioner-decree holder entered into an agreement for sale with the original defendant in the suit on



15.11.1993 for purchase of the suit land described in the plaint on the total consideration amount of Rs. 55,000/-. His further submission is that the petitioner paid Rs. 40,000/- as advance and was ready and willing to pay the contracted amount to the defendant. The possession of the suit property was handed over to the petitioner, which has been admitted by the original defendant in his written statement as would be evident from the judgment dated 20.01.2018. He further submits that the original defendant died during the pendency of the suit and his heirs were substituted. Despite notice, the substituted heirs did not appear in the suit and the suit was decreed ex-parte in which the learned trial court directed the petitioner to pay the balance amount of Rs. 15,000/- in favour of the defendant with further direction to the defendant to execute the sale deed for the subject land in favour of the petitioner and alternatively it has been directed that the defendant shall refund the advance amount of Rs. 40,000/- which was deposited on 15.11.1993 along with 6% yearly interest to the petitioner-plaintiff. Aggrieved by the alternative decree passed by the trial court the petitioner preferred an Appeal before the lower appellate court vide Appeal No. 10/2018. In the meanwhile, the substituted heirs entered into appearance in the execution case and on this



the executing court directed the judgment debtor to deposit a sum of Rs. 99,600/- in the Nazarat of the Civil Court and simultaneously directed the decree holder to hand over possession in favour of the judgment debtor. A sum of Rs. 99,600/- has already been deposited in court by the judgment debtor.

3. Learned counsel submits that the executing court has exceeded its jurisdiction while directing the decree holder to hand over possession inasmuch as no order / decree has been passed by the trial court to hand over possession in favour of the judgment debtor after receipt of the advance amount plus interest. He further submits that no petition under Section 144 of the C.P.C. has been filed by the judgment debtor and only an objection to the execution petition has been filed and in that petition a prayer has been made to treat this petition as a petition filed under Section 144 of the C.P.C. Referring to paragraph 9 of the petition filed by the judgment debtor, learned counsel submits that as per the case of the judgment debtor they have been dispossessed after passing of the decree in October, 2017. The decree has admittedly been passed on 23.03.2017. Accordingly, submission is that provisions of Section 144 of the C.P.C. will not apply in the facts and circumstances of the case.



4. On the other hand, learned counsel for the respondents submits that the petitioner has already preferred Appeal against the judgment and decree, which is still pending. Accordingly, submission is that this issue may be decided after disposal of the Appeal filed by the petitioner.

5. Having heard learned counsel for the parties and taking into consideration the fact that Appeal No. 10 / 2018 is pending, this application is disposed of with liberty to the petitioner to approach this Court by way of appropriate petition after disposal of the Appeal No. 10/2018.

6. Till disposal of the Appeal, operation of the impugned order dated 20/01/2018 to the extent of direction given to the petitioner to handover possession of the suit property in favour of the respondent- judgment debtor is stayed.

(Anil Kumar Sinha, J)

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