

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.48 of 2019

In
CIVIL REVIEW No.508 of 2018

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- 1.1. Kumud Sinha W/o Late Niranjana Kumar Sinha resident of Village- Bishunpur- Arara, P.S.- Goraul, District- Vaishali, at present residing at Mohalla- Damuchak, P.S.- Kazi Mohammadpur, District- Muzaffarpur.
 - 1.2. Kriti daughter of Late Niranjana Kumar Sinha resident of Village- Bishunpur- Arara, P.S.- Goraul, District- Vaishali, at present residing at Mohalla- Damuchak, P.S.- Kazi Mohammadpur, District- Muzaffarpur.
 - 1.3. Riktika daughter of Late Niranjana Kumar Sinha, resident of Village- Bishunpur- Arara, P.S.- Goraul, District- Vaishali, at present residing at Mohalla- Damuchak, P.S.- Kazi Mohammadpur, District- Muzaffarpur.
 - 1.4. Aliza daughter of Late Niranjana Kumar Sinha resident of Village- Bishunpur- Arara, P.S.- Goraul, District- Vaishali, at present residing at Mohalla- Damuchak, P.S.- Kazi Mohammadpur, District- Muzaffarpur.
 - 1.5. Lokesh Kumar S/o Late Niranjana Kumar Sinha resident of Village- Bishunpur- Arara, P.S.- Goraul, District- Vaishali, at present residing at Mohalla- Damuchak, P.S.- Kazi Mohammadpur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. Ashok Kumar Jha Son of Late Amar Nath Jha
2. Raj Kumar Jha Son of Late Amar Nath Jha
3. Sudhir Kumar Jha Son of Late Amar Nath Jha
4. Lalit Kumar Jha Son of Late Amar Nath Jha
5. Mina Kumari D/o Late Amar Nath Jha resident of Mohalla- Damuchak, P.S.- Kazi Mohammadpur, District- Muzaffarpur.
6. Most. Indra Kuer Wife of Late Nand Kishore Mishra, D/o Late Amar Nath Jha, resident of Mohalla- Damuchak, P.S.- Kazi Mohammadpur, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Bhubneshwar Prasad
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 13-12-2022

This Civil Revision application has been directed
against the Judgment dated 14.09.2018 passed in Misc. Appeal



No. 18 of 1999 passed by learned Fast Track Court 1st, Muzaffarpur whereby and whereunder he has rejected the Misc. Appeal filed by the original petitioner Niranjana Kumar Sinha (now deceased who is represented through his legal heirs) and confirmed the order dated 13.08.1999 passed by the learned Special Execution Munsif, Muzaffarpur allowing the Misc. Case No. 09 / 1996 filed by the respondents for restitution of their possession over the land and house (detailed in Schedule -1 of the Misc. Application).

2. As per the petition, it appears that original plaintiff namely Smt. Pramila Devi W/o Late Satyendra Kumar Sinha and mother of late Niranjana Kumar Sinha had filed title suit No. 198/1969 against original defendant namely Smt. Sakali Devi and three others for declaration of title in favour of plaintiff and for decree of recovery of possession of land in question (given in Schedule 1 of the suit) and in alternative for partition. The ex-parte decree was passed on 01.10.1983 by the learned trial court and thereafter Execution Case bearing Execution Case No. 14 of 1985 was filed by the decree holder against the Judgment Debtor before the Court of the learned Execution Munsif, Muzaffarpur in which writ of delivery of possession was issued on 21.01.1994 and the same was effected on 22.01.1994 and the Decree Holder



is in possession of the land in question.

3. The Judgment Debtor filed a Misc. Case bearing no. 29/1983 under Order 9 Rule 13 CPC to set aside the ex-parte decree dated 01.10.1983 in Title Suit No. 169/1996 which was allowed on 07.10.1994 and the ex-parte decree was set aside. The Civil Revision No. 2214 of 1994 filed against the said order dated 07-10-1994 has also been dismissed by this Court vide order dated 01-05-1995. The said restored T.S. No. 198/69 was heard and disposed of vide decree of dismissal dated 27-04-1996. The title Appeal no. 43/07 filed against the Judgment and decree of dismissal of T.S. No. 198/69 also dismissed on 06-05-2017 and the appellants have moved this Court by filing Second Appeal vide S.A. No. 545/2017 which is pending for adjudication.

4. The respondents filed Misc. Case No. 09/1996 before the Court of Special Execution Munsif, Muzaffarpur under Section 144 and 151 of the code of Civil Procedure for substitution of their possession over the suit land and house alongwith compensation of damages caused to their house which was allowed.

5. The Courts below held that plaintiff has got no right or title over the suit land. The appellate Court below held that



Sakli Devi and her legal representatives/respondents were entitled for restitution on reversal of the ex-parte decree and the appellants are/were liable to be reverted back to the position they had before the D.P. in view of clear provision of Section 144 C.P.C.

6. Heard learned counsel for the petitioner.

7. Learned counsel for the petitioner has submitted that without awaiting the adjudication of aforesaid S.A. No. No. 545 of 2017, the impugned Judgment/order has been passed which is bad in law. He has further submitted that the provision of Section 144 CPC would not apply to a case where a decree is set aside under Order 9 Rule 13 CPC. It is stated that the decree is required to be varied or reversed in appeal, revision or other proceedings or set aside or modified in any suit instituted for the purpose. He has relied upon the Judgment of Orissa High Court in **Garuda Singh Manjhi Vs Dhana Bai and Others** reported in AIR 1989 Orissa 103. It is observed that Judgment that Ex-parte decree on the basis of absence of due service of summons is an act of the Court by which the defendant suffered the deprivation of the property in his possession. The executing court is to restore back the possession by exercise of the inherent power. When, however, the defendant could not appear when the



suit was called for hearing for reasons which were found to be sufficient cause, the suffering of the defendant by deprivation of the property is not on account of the act of the Court. The plaintiff cannot be blamed also for getting an ex parte decree. Exercise of inherent power in such a case is not appropriate as a general rule though in exceptional cases the Court may consider the question on its own merits.

8. In the present case the restoration application had been filed under Section 144 and 151 of CPC accordingly, the issue raised by the petitioner in this regard is immaterial. It appears from the record that suit of the plaintiff ultimately dismissed by the trial court and also by appellate court and mere filing of second appeal cannot debar the concern court for passing the restitution order except any order passed by the appellate court to the contrary. The courts below have passed the detailed and reasoned Judgment after discussing the contention of the parties and the evidence adduced on their behalf and held that applicants are entitled for restitution over the land and house from which they have been dispossessed however they are not entitled for any compensation and damage. The learned Court below in the impugned Judgment discussed the fact and the law and observed that 'other proceeding' includes proceeding under



Order IX Rule 13 C.P.C. It is also well settled principle that a wrong order should not be perpetuated by keeping it alive and respecting it.

9. The appellate Court rightly stated that it is well settled that even in cases in which Section 144 C.P.C. will not apply the Court can undo the wrong done in consequences of decree which was erroneous and reversed or varied subsequently by invoking its inherent power under Section 151 C.P.C. The Hon'ble Supreme Court in its Judgment in **South Eastern Coal Field Ltd Vs State of M.P. AIR 2003 SC 4482** observed that Section 144 of the C.P.C is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of Justice, equity and fair play. That is why it is often held that even away from Section 144 the Court has inherent jurisdiction to order restitution so as to to complete justice between the parties. In paragraph 27 of the said Judgment it is observed that no one shall suffer by an act of the Court is not a rule confined to an erroneous act of the Court; 'the act of the Court' embraces within its sweep all such acts as to which the Court may form an opinion in any legal proceeding that the Court would not have so acted had it been correctly apprised of the facts and law.

10. The impugned order does not suffer from any legal



infirmity or irregularity and is based on the cogent reasons.

11. Thus, there is no merit in this Civil Revision and it is, accordingly, dismissed with no order as to cost.

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	20.09.2022
Uploading Date	14.12.2022
Transmission Date	

