

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.44 of 2018

1. Shambhu Nath Chaudhary
2. Suman Chaudhary,
3. Satendra Chaudhary,
4. Upendra Chaudhary, All S/o Late Baij Nath Chaudhary, All R/o village- Bali Tola Hata, Paragana Bara, PS- Hussainganj, District- Siwan.

... .. Petitioner/s

Versus

1. Most. Champa Kunwar W/o Late Ram Bachan Chaudhary,
2. Dharmendra Yadav, S/o Late Ram Bachan Chaudhary,
3. Banarasi Chaudhary,
4. Kasha Chaudhary,
5. Balaram Chaudhary, All S/o Late Lalji Chaudhary, All R/o village- Bali Tola Hata, Paragana Bara, PS- Hussainganj, District- Siwan.
6. Lilawati Devi, null null
7. Gyanti Devi,
8. Suganti Devi, All D/o Late Baijnath Chaudhary,
9. Darpano Devi, W/o Late Sukath Chaudhary,
10. Rameshwar Yadav,
11. Bidha Sagar Yadav,
12. Kishan Yadav, All S/o Late Sukath Chaudhary,
13. Mala Devi,
14. Savita Devi,
15. Gita Devi, All D/o Late Sukath Chaudhary,
16. Sudama Chaudhary,
17. Ramnath Chaudhary, S/o Both Late Tapeswar Chaudhary,
18. Kailash Chaudhary,
19. Shri Ram Chaudhary,
20. Jai Ram Chaudhary, All S/o Late Rikhdeo Chaudhary,
21. Lagani Devi, D/o Rikhdeo Chaudhary,
22. Janak Chaudhary,
23. Sawaminath Chaudhary, Both S/o Late Singhasan Chaudhary, All are R/o Village- Bali Tola Hata, Paragana Bara, PS- Hussainganj, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Chandra Kant



For the Respondent/s : Mr.Rajendra Kumar Jain

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 05-09-2022 Heard the parties.

The petitioner is the judgment debtor in a partition suit bearing Partition Suit No. 15 of 1983 in which preliminary decree was passed on 11.03.1988. The petitioner being aggrieved by the preliminary decree preferred appeal bearing Title Appeal No. 28 of 1988. An execution case was filed by the respondent - decree holder for execution of the final decree bearing Execution Case No. 5 / 1989. The petitioner is aggrieved by the order dated 06.11.2017 passed in Execution Case No. 5 / 1989 whereby the petition dated 06.10.2017 filed by the petitioner for re-call of the order dated 22.08.2017 has been rejected.

Learned counsel for the petitioner submits that petitioner was not aware about the execution case having been filed by the respondent therefore he could not appear on 22.08.2017 and could not file objection to the report of the Survey Knowing Advocate Commissioner accordingly he could not appear on the date fixed i.e. on 22.08.2017 when the execution case was finalized and the case was consigned to record.



On the other hand, Mr. Rajendra Kumar Jain, learned counsel appearing for the respondent-decree holder submits that from perusal of the impugned order it would be evident that petitioner had knowledge of the pendency of the execution case and the execution case was dismissed for default in the year 2012. In the proceeding for restoration the petitioner also appeared before the execution court and as such submission is that petitioner had knowledge about pendency of the execution case. He further submits that it also appears from the impugned order that Survey Knowing Advocate Commissioner on the basis of measurement done by him submitted his report and on the basis of that report final decree has been executed by the executing court and the case has been consigned to record.

Having heard learned counsel for the parties and after going through the impugned order it appears that petitioner was having knowledge about the execution case and deliberately avoided to appear in the same. The decree has already been executed and delivery of possession has been given. The appeal filed by the petitioner against the preliminary decree is still pending. In my opinion the petition for re-call filed by the petitioner is not *bona fide* and the same has been filed in the abuse of the process of the court.



I do not find any merit in this application.
This civil miscellaneous application is rejected.

(Anil Kumar Sinha, J)

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