

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.500 of 2022**

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Smt. Urmila Devi Wife of Binda Choudhary, Resident of Mohalla-
Guljarbagh, Rajgir, P.S.- Rajgir, District- Nalanda at Biharsharif.

... .. Petitioner/s

Versus

Smt. Lila Devi Wife of Babu Rohan Yadav, Resident of Village and P.S.-
Rajgir, District- Nalanda at Biharsharif.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hansraj, Advocate.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 16-11-2022 Heard Mr. Hansraj, learned counsel for the

petitioner.

The petitioner has approached this Court being aggrieved by the order dated 16.6.2022 passed by the learned Munsif, Biharsharif, Nalanda, in Execution Case No. 07 of 2006 by which the learned Executing Court has dismissed the petition filed by the judgment debtor under Order XXI Rule, 26, 29 of the Civil Procedure Code for stay of the execution.

Learned counsel for the petitioner submits that a suit for eviction on the ground of personal necessity was filed by the respondent/decreed-holder bearing Eviction Suit No. 17/1994 which was decreed and the decree-holder filed the Execution Case No. 07 of 2006. The petitioner filed a Title Suit No. 236 of 2016 claiming the title over the property involved in the decree



and for declaration of sale deed dated 5.12.1989 as null and void and also for setting aside the judgment passed in Eviction Suit No. 17 of 1994 with further prayer for injunction in Execution Case No. 07 of 2006. He next submits that presently, the injunction petition filed in the aforesaid suit bearing Title Suit No. 236 of 2016 is pending for consideration. A petition under Order VII Rule 11 of the Civil Procedure Code was filed by the respondent in the Title Suit but the same has been rejected, against which, the respondent has approached this Court in Civil Revision No. 153 of 2018. Accordingly, the submission of learned counsel is that the suit has been filed by the petitioner in which he has prayed for stay of the Execution Case No. 07 of 2006. The petitioner filed a petition under Order XXI, Rule 26 and 29 CPC, but the learned Executing Court has committed jurisdictional error in rejecting this petition.

I have heard learned counsel for the petitioner and have perused the impugned order as well as material available on record. It is an admitted position that the petitioner is a judgment debtor and he has not preferred any appeal and/or revision against the eviction decree, instead the petitioner filed the separate suit after more than ten years of the passing of the eviction decree, bearing Title Suit No. 236 of 2016 for setting



aside the judgment passed in Eviction Suit as well as with other reliefs.

The learned Munsif while rejecting the petition for stay of the execution has taken note of the fact that a similar petition was earlier filed before the court and the same was also dismissed and, thereafter, the writ for delivery of possession was issued by the Executing Court.

Taking into consideration the aforesaid fact that the petitioner is a judgment debtor and the finding arrived at by the learned Executing Court that similar prayer of the petitioner was earlier rejected, accordingly, in my opinion, the learned Executing Court has not committed any material irregularity and/or jurisdictional error while passing the impugned order.

Accordingly, this application stands dismissed.

(Anil Kumar Sinha, J)

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