

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.840 of 2022

1. Bejoy Kumar Sah @ Vijay Kumar Sah s/o Late Tanoki Sah, Resident of Mohalla-Mirchaibari, P.S.-Sahayak, District-Katihar, PIN-854105.
2. Pradeep Kumar Sah s/o Bejoy Kumar Sah @ Vijay Kumar Sah, Resident of Mohalla-Mirchaibari, P.S.-Sahayak, District-Katihar, PIN-854105.

... .. Petitioner/s

Versus

1. Monalisha Choudhary W/o Santosh Kumar, Resident of Mohalla-Sultan Pokhar, P.O. and P.S.-Forbesganj, District-Araria.
2. Kamakhiya Narayan Sharma, Son of Late Gayatri Devi, Resident of Village-Sitapur Sharma ola, P.S.-Ticpara at present Resident of Mohalla-29F, Gali No. 25, Indra Park, New Delhi.
3. Vijoy Sharma, son of Late Gayatri Devi, W/o Late Akhila Nand Sharma, Resident of Village-Sitapur Sharma ola, P.S.-Ticpara at present Resident of Mohalla-29F, Gali No. 25, Indra Park, New Delhi.
4. Som Nath Sharma, Son of Late Gayatri Devi, W/o Late Akhila Nand Sharma, Resident of Village-Sitapur Sharma ola, P.S.-Ticpara at present Resident of Mohalla-29F, Gali No. 25, Indra Park, New Delhi.
5. Santosh Sharma, Son of Late Gayatri Devi, W/o Late Akhila Nand Sharma, Resident of Village-Sitapur Sharma ola, P.S.-Ticpara at present Resident of Mohalla-29F, Gali No. 25, Indra Park, New Delhi.
6. Meena Sharma, daughter of Late Gayatri Devi, W/o Late Akhila Nand Sharma, Resident of Village-Sitapur Sharma ola, P.S.-Ticpara at present Resident of Mohalla-29F, Gali No. 25, Indra Park, New Delhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anshuman Jaipuriyar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 21-12-2022 Petitioners/appellants/defendants have challenged the order dated 19.09.2022 passed in Title Appeal No. 09/2020 by which the petition filed by the petitioner under Order 39 Rule 1 & 2 read with Section 151 of the CPC has been rejected with liberty to the petitioners/appellants to file an appropriate



application in accordance with law before the appellate court for stay of further proceeding of Execution Case No. 02/2020.

2. The plaintiff/respondent 1st Set filed the Title Suit bearing No. 159/2006 against the petitioners for declaration that the plaintiff has got right, title over the suit land described at schedule appended to the foot of the plaint. The defendants 1st party are defaulters and trespassers and are liable to be evicted from the premises located over the suit land along with suit land with prayer for recovery of possession in favour of the plaintiff and against the defendants, with a further prayer to pass a decree of Rs. 9133/- as arrears of monthly rent from 25.02.2006 to 30.11.2006 in favour of the plaintiff and against the defendant 1st party.

3. The case of the petitioner is that Respondents 2nd Set i.e., late Gayatri Devi, proposed to the petitioner to sell the land in dispute for a consideration amount of Rs. 1,25,000/- (One Lac twenty five thousand). The petitioner paid Rs. 36,000/- as an advance in cash and remaining consideration amount was to be paid on or before the execution of sale-deed. In the meanwhile, Gayatri Devi sold the land in dispute to the plaintiff. The petitioners filed Title Suit No. 99/2006 for specific performance wherein Respondent No. 1, herein has been made



defendant 2nd Party and Gayatri Devi has been made Defendant 1st Party. Gayatri Devi has died and her legal heirs have been substituted and later made party as Respondents No. 2 to 6 in the present case.

4. Learned counsel for the petitioners submits that Title Suit No. 159/2006 filed by Respondent No.1/plaintiff has been decreed in favour of the plaintiff by judgment and decree dated 23.12.2019/20.01.2020. Aggrieved by the same, the petitioners preferred Title Appeal No. 09/2020. The Respondent No.1 after coming to know about the appeal and upon service of summon has filed Execution Case no. 02/2020 in a hurry for eviction of the petitioners/judgment debtors. He further submits that respondents are in haste and the execution proceeding is going on expeditiously. Therefore, it was necessary to obtain interim injunction in favour of the appellant/petitioners with specific direction to the lower court to stop further proceeding in the Execution Case till disposal of the appeal.

5. Accordingly, the petitioners filed a petition under Order 39 Rule 1 & 2 read with Section 151 of the CPC for granting interim injunction and passing specific direction to the lower court to stop the further proceeding till disposal of the appeal as the petitioners would suffer irreparable loss and also



to restrain the respondents from selling the suit property during pendency of appeal.

6. He also submits that the possession of the suit land is with the petitioners. The suit property is a residential house-cum-shop and hence balance of convenience is in favour of the petitioner and the petitioner would suffer irreparable loss if the injunction is not granted. The Court has to protect the interests of the petitioners otherwise Title Appeal No. 20/2020 will become infructuous on account of dispossession of the petitioners.

7. Learned counsel next argues that quoting wrong provision of law in the petition seeking stay of the execution case i.e., Section 151 CPC is immaterial and the learned lower appellate court ought to have treated the stay petition filed under Order 41 Rule 5 CPC.

8. I have heard learned counsel for the petitioners and perused the material on record including the impugned order. The learned District Appellate Court has considered the argument advanced by the petitioners on a petition filed by them under Order 39 Rule 1 & 2 read with Section 151 of the CPC and has recorded the finding that no *prima facie* case is there in favour of the petitioners nor the balance of convenience is in



their favour. It is admitted fact that possession of the property in question is with the petitioners/appellants and there is nothing on record to show that the respondents are trying to damage or alienate or sell the property in question nor they are trying to dispossess the petitioners by any illegal means. As such, the appellate court has also come to the conclusion that there is no question of any irreparable loss to the appellants. However, the appellate court has recorded in its order that there is specific provision regarding stay of the execution of decree if the sufficient cause is shown to the appellate court. Accordingly, the Court has given liberty to the petitioners/appellants to file such an application in accordance with law before the appellate court which shall be decided on its own merit.

9. There is specific provision in CPC prescribed under Order 41 Rule 5 for stay of execution proceeding by the appellate court upon showing the sufficient cause. Section 151 CPC is the inherent power given to the court for ends of justice to prevent abuse of the process of Court.

10. The Hon'ble Supreme Court in a judgment passed in ***Civil Appeal No. 5784/2022(@ SLP (Civil) No. 7015/2022)*** has held that Section 151 CPC can only be applicable if there is no other remedy available in accordance with the existing



provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs and bypass procedural safeguards inbuilt in the CPC.

11. As discussed above, there is specific remedy available to the petitioners seeking stay of the execution under Order 41 Rule 5 CPC. The learned District Appellate Court while rejecting the injunction petition on merit has given liberty to the petitioners to file a fresh petition in accordance with law before the appellate court for stay of the execution.

12. For the discussions held hereinabove, I do not find any reason to interfere with the order impugned. Accordingly, this application is rejected.

(Anil Kumar Sinha, J)

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