

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.823 of 2018

1. Shafeena Khatoon @ Munni W/o Late Asafaque Ahmad
2. Faijan Alim, Son of Late Asafaque Ahmad
3. Saif Ali, Son of Late Asafaque Ahmad
4. Gulabasa Praveen, Daughter of Late Asafaque Ahmad (Petitioners 2 to 4 are minors represented through their Mother,
All are resident of Mohalla- Sherganj, Police Station- Town Sasaram, District- Rohtas.

... .. Petitioner/s

Versus

1. Habibunisha W/o Late Mohammad Sayeed, resident of Mohalla- Sherganj, Police Station- Town Sasaram, District- Rohtas.
2. Iftekhhar Hussain @ Takku Bhai, S/o Israr Hussain
3. Imtiyaj Hussain son of Late Khurshida Khatoon @ Munni
4. Neyaj Hussain, son of Late Khurshida Khatoon @ Munni
5. Mumtaz Hussain son of Late Khurshida Khatoon @ Munni
6. Ishteyak Hussain, son of Late Khurshida Khatoon @ Munni
7. Ekbal Hussain, son of Late Khurshida Khatoon @ Munni
8. Zakir Hussain, son of Late Khurshida Khatoon @ Munni
9. Mushtari Hussain, son of Late Khurshida Khatoon @ Munni
10. Ajmeri Khatoon, daughter of Late Khurshida Khatoon @ Munni,

All resident of Mohalla- Karan Sarai, Police Station- Town, Sasaram, District- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shravan Kumar, Sr. Adv. Mr.Dinesh Maharaj
For the Respondent/s	:	Mr. Mr. Raghbir Ahsan, Sr. Adv. Mr. Wasi Akhtar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

12 11-10-2022 The petitioner nos. 2 to 4 are sons and daughter of
petitioner no. 1 and the petitioner no. 1 is the widow and her
husband as well as her mother-in-law Late Khurshida Khatoon



were defendants in the suit for specific performance filed by the respondent no. 1, bearing Title Suit No. 59 of 2001. The said suit was decreed in favour of the respondent no. 1-plaintiff on 29.06.2009 and Title Appeal No. 43 of 2009 as well as Second Appeal No. 352 of 2014 preferred thereto were also dismissed vide orders, dated 30.04.2011 and 13.08.2012, respectively. S.L.P. (Civil) No. 30866 of 2013 was filed by the mother-in-law of the petitioner no. 1, in which the petitioners herein were substituted. However, the said S.L.P. (Civil) No. 30866 of 2013 also got dismissed on 08.10.2013. After the petitioner no. 1, along with her minor children, were substituted at the stage of SLP and after dismissal of the same on 08.10.2013, the petitioners filed a suit on 19.10.2013, bearing Title Suit No. 943 of 2013, for declaration of title upon half of the suit land on the basis of *Hibbanama* (oral gift) given by her father-in-law in the year 1995. The plaint of the suit filed by the petitioners was rejected by the learned Trial Court under Order VII Rule 11 (d) of the Code of Civil Procedure and the recall petition filed by the petitioners is still pending before the learned Court below.

A petition, under Order XXI Rule 29 of the Code of Civil Procedure, was filed by the petitioners before the learned Executing Court for stay of the execution, in Execution Case



No. 01 of 2009, till disposal of the suit, which has been rejected and the same has been impugned by the petitioners before this Court in the present application.

Learned Senior Counsel for the petitioners submits that the petitioners are having right by virtue of *Hibbanama* upon half portion of the suit land and the learned Court below rejected the plaint of the suit filed by the petitioners after the order of transfer of the suit passed by the learned District Judge, Rohtas, at Sasaram, on 22.02.2021. He further submits that the order of transfer from the Court of learned Sub Judge-X to learned Sub Judge-IV was passed by the learned District Judge, Rohtas, at Sasaram, on 22.02.2021; whereas the plaint of the suit filed by the petitioners has been rejected by learned Sub Judge-X on 29.03.2022.

The submission of the petitioners is that since the suit itself was transferred from the Court of learned Sub Judge-X, the rejection of the plaint by learned Sub Judge-X is without jurisdiction and for which a petition for recalling the order by which the plaint of the suit filed by the petitioners was rejected, has been filed by the petitioners, which is still pending.

Accordingly, in view of the aforesaid facts, the petitioners filed a petition, under Order XXI Rule 29 of the



Code of Civil Procedure before the learned Executing Court for stay of the proceedings of Execution Case No. 01 of 2009, filed by the respondent no. 1-plaintiff, which has been rejected without appreciating the facts mentioned herein above.

On the other hand, learned Senior Counsel for the respondents-plaintiffs submits that the learned Executing Court has rightly rejected the petition filed by the petitioners for stay of the proceedings of Execution Case No. 01 of 2009 inasmuch as the petitioners were party in the suit at the stage of the SLP before the Hon'ble Supreme Court and were substituted and after their substitution, the SLP has been dismissed on 08.10.2013. He further submits that after dismissal of the SLP, as an afterthought, the petitioners filed a suit for declaration of title upon half of the suit land on the basis of *Hibbanama* in favour of petitioner no. 1 by her father-in-law and after death of the husband of the petitioner no. 1, the petitioner no. 1 has claimed title upon 3/4th of the suit land. He next submits that after the *Hibbanama* alleged to have been given to petitioner no. 1 in the year 1995 itself, she did not take any steps for mutating her name upon half of the suit property in the revenue records and after dismissal of the SLP, a false plea has been raised in the suit filed by the petitioners and the plaint itself has been rejected



by the learned Court below and instead of challenging that order in the appeal, the petitioners have filed a petition for recall of that order before the learned Court below and have also filed a petition before the learned Executing Court for stay of the proceedings of Execution Case No. 01 of 2009, till disposal of the suit filed by the petitioners.

I have heard Mr. Shravan Kumar, learned Senior Counsel appearing on behalf of the petitioners and Mr. Raghib Ahsan, learned Senior Counsel, appearing on behalf of the respondents.

From perusal of the materials available on record and the facts involved in this case, it is clear that the learned Trial Court, in the suit filed by the respondent no. 1-plaintiff against the husband and mother-in-law of the petitioner no. 1, has passed a decree of specific performance, which was challenged in Title Appeal No. 43 of 2009 as well as Second Appeal No. 352 of 2014 and also S.L.P. (Civil) No. 30866 of 2013 before the Supreme Court, and all the appeals including the SLP was dismissed. It also appears that after dismissal of the SLP, in which the petitioners were substituted as party, they filed a suit for declaration of title on the basis of Hibbanama and the plaint of the suit filed by the petitioners has been rejected under Order



VII Rule 11 (d) of the Code of Civil Procedure. The petitioners have filed a recall petition and the same is pending, accordingly, the petitioners are free to take step(s) for recall of the order or any other step(s) available to them under the law, but certainly, in view of the attending facts, the petitioners have no right to get the execution case filed by the respondent no. 1-plaintiff stayed during the pendency of the suit filed by them.

Accordingly, I come to the conclusion that the impugned order passed by the learned Executing Court requires no interference by this Court.

This application is, accordingly, dismissed.

I.A. Nos. 4215 of 2018 and 02 of 2022 are also stands dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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