

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.55 of 2020

Rajeshwari Devi, wife of Shree Ram Chandra Sinde, resident of A. Maradwak village Holichagaon, S. Wadiz District Satara (Maharashtra), at present residing at Bhatta Bazar, Lakhan Chowk (Priyanka Golden Polish Centre), Police Station K. Hat, District- Purnia.

... .. Petitioner/s

Versus

1. Sri Gopal Prasad Sah, son of late Ram Prasad Sah, resident of Bhatta Bazar, Lakhan Chowk (Priyanka Golden Polish Centre), Police Station K. Hat, District - Purnia.
2. Sri Chandra Mohan Prasad Sah, son of late Ram Prasad Sah, resident of Bhatta Bazar, Lakhan Chowk (Priyanka Golden Polish Centre), Police Station K. Hat, District - Purnia.
3. Sri Krishna Mohan Sah, son of late Ram Prasad Sah, resident of Bhatta Bazar, Lakhan Chowk (Priyanka Golden Polish Centre), Police Station K. Hat, District - Purnia.
4. Mostt. Iadwati Devi, wife of late Ram Prasad Sah, resident of Bhatta Bazar, Lakhan Chowk (Priyanka Golden Polish Centre), Police Station K. Hat, District - Purnia.
5. Shree Ram Chandra Sinde, son of Anand Rao Sinde, resident of A. Maradwak village Holichagaon, S. Wadiz Satara (Maharashtra), at present residing at Bhatta Bazar, Lakhan Chowk (Priyanka Golden Polish Centre), Police Station K. Hat, District- Purnia.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ravindra Kumar Choudhary
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT/ORDER

04 **08-08-2022**

Heard Mr. Kamal Nayan Chaubey, learned senior counsel for the petitioner.

2. Petitioner has filed the present application for setting aside the order dated 11.11.2019/13.11.2019 passed in Execution Case No. 01/2011 arising out of Eviction Suit No.



18/2003 by learned Munsif, Sadar, Purnea whereby the court below has rejected the petition dated 24.09.2019 filed by the petitioner under Order 21 Rule 97 to 101 of the CPC.

3. The brief fact involved in this case is that the petitioner is the judgment debtor in a decree for eviction passed in Eviction Suit No. 18/2003 filed by the plaintiffs/respondents who are sons and widow of late Ram Prasad Sah. The property/land under decree is situated in M.S. Khata No. 128, M.S. Plot No. 18 which belongs to all the heirs of Late Ram Prasad Sah in which sons of Late Ram Prasad Sah, widow of Ram Prasad Sah, heirs of deceased son of Ram Prasad Sah and daughters of Ram Prasad Sah have got equal interest.

4. Learned senior counsel for the petitioner submits that despite the fact that only sons and widow of Late Ram Prasad Sah got decree in Eviction Suit No. 18/2003, the ownership and interest of daughters of Ram Prasad Sah also exists in the subject matter of decree under execution.

5. During pendency of execution case, the two daughters of late Ram Prasad Sah executed and transferred their shares in the land in favour of the petitioner/judgment debtor by way of registered sale deed and declared that possession pursuant thereto has also been given to the petitioner. The



petitioner judgment debtor has already instituted title suit for partition of land and property acquired through registered sale deed dated 17.08.2019 in the land under execution. In the said background, the petitioner filed a petition for instituting Misc. Case under Order 21 Rule 97 to 101 of the CPC with a further prayer to stay the execution case till the bifurcation of land and property described in Schedule-A of the petition.

6. Learned senior counsel for the petitioner submits that by the impugned order, the learned executing court has dismissed the aforesaid application filed under Order 21 Rule 97 to 101 CPC on erroneous ground that the purchase made by the petitioner by way of sale deed dated 17.08.2019, during pendency of execution proceeding, is hit by Section 52 of the Transfer of Property Act without appreciating that the petitioner acquired independent right, title, interest and possession by virtue of sale deed executed by co-sharers admittedly having right, title and interest in the property under execution. He further submits that the petitioner is already in possession of the property and unless his rights/share are appropriately ascertained, the petitioner cannot be deprived of the possession.

7. In support of his arguments, learned counsel relies upon the judgments passed in the case of *N.S.S. Narayana*



Sarma & Ors. v. Goldstone Export (P) Ltd & Ors reported in ***2007(2) PLJR 201 (SC)*** and in the case of ***Silverline Forum Pvt. Ltd v. Rajiv Trust & Anr*** reported in ***(1998) 3 SCC 723***.

8. I have heard learned senior counsel for the petitioner and gone through the material on record along with impugned order. The fact involved in this case is not in dispute that the petitioner is the judgment debtor and during pendency of the execution case, she purchased some portion of the property/land under execution. Accordingly, the petitioner is objecting and resisting the execution of the decree by filing the petition under Order 21 Rule 97.

9. The Hon'ble Supreme Court in a judgment reported in the case of ***Gajara Vishnu Gosavi v. Prakash Nanasahed Kamble & Ors*** as reported in ***2009(4) PLJR (SC)225*** has laid down the law that in a given case an undivided share of a coparcener can be a subject matter of sale/transfer, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds, either by the decree of a Court in a partition suit, or by settlement among the co-sharers.

10. In ***AIR 1953 SC 487 (Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh & Ors)***, the Hon'ble



Supreme Court came to conclusion that a purchaser of a coparcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. He has a right only to sue for partition of the property and ask for settlement of his share in the suit property.

11. Hon'ble Supreme Court in another judgment passed in the case of ***Pramod Kumar Jaiswal & Ors. v. Bibi Husn Bano & Ors*** reported in ***AIR 2005 SC 2857*** has held in paragraphs 21, 23, 35 and 36 which are quoted hereinbelow:-

"21. With respect, we cannot consider this decision as laying down a proposition of law that on a tenant acquiring the right of a co-owner landlord, the tenancy of a building gets extinguished and the landlord cannot seek eviction of the tenant under the Act or the fixation of fair rent under the Act. It must be pointed out that the observations as above are made even without referring to Section 111(d) of the Transfer of Property Act which governs such a case and the earlier decisions of this Court. The observation runs counter to the statutory provision. Hence, the decision must be held to be not correctly decided on this question. The decision in Jagdish Dutt and Anr. v. Dharam Pal and Ors. case (supra) is also of no assistance to the appellants since that was a case to which, according to this Court, Section 111(d) of the Transfer of Property Act had no application. Their Lordships stated in paragraph 6 of the Judgment therein,

"We need not examine the scope of Section 111(d) of the Transfer of Property Act inasmuch as Respondent No. 2 is held to be trespasser and not a lessee."

22. xxxx



23. In T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors. (AIR 2004 SC 2427) this Court considered the question in detail in the context of Sections 105 and 111 of the Transfer of Property Act and came to the conclusion that there is no determination of the lease in terms of Section 111(d) of the Transfer of Property Act where a tenant acquires only partial ownership interest. After referring to the decision of the Privy Council, the decision of this Court and other relevant materials, this Court held that the lease cannot be said to have been determined by merger so long as the interests of the lessee, the lesser estate and that of the owner, the larger estate, do not come to coalesce in full. This Court also noticed that merger was largely a question of intention dependant on certain circumstances and the courts will presume against it when it operates to the disadvantage of a party. With respect we find that the position has been correctly stated in T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors. (supra). The subsequent decision in India Umbrella Manufacturing Co. and Ors. v. Shagabandei Agarwalla (dead) by Lrs. Savitri Agarwalla (Smt.) and Ors. (AIR 2004 SC 1321) also proceeds on the same lines and supports the above position. We approve the principle of law stated in T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors. (supra).

24. xxxx

25. xxxx

26. xxxx

27. xxxx

28. xxxx

29. xxxx

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31. xxxx

32. xxxx

33. xxxx

34. xxxx

35. Here in this case, the lessee has acquired only the rights of certain co- owner landlords and may have the right to work out his



rights against the others. The right to work out his rights would not enable him to plead that the two rights in the whole of the property has come to vest in him. What is involved in the present case is the question whether on the acquisition of the rights of some of the co-owner landlords by the tenant, there is an extinguishment of the tenancy by merger as postulated by Section 111(d) of the Transfer of Property Act. T. Lakshmipathi answers that question and with respect, answers that question correctly.

36. A plain and grammatical interpretation of Section 111(d) of the Transfer of Property Act leaves no room for doubt that unless the interests of the lessee and that of the lessor in the whole of the property leased, become vested at the same time in one person in the same right, a determination of the lease cannot take place. On taking an assignment from some of the co-owner landlords, the interests of the lessee and the lessor in the whole of the property do not become vested at the same time in one person in the same right. Therefore, a lessee who has taken assignment of the rights of a co-owner lessor, cannot successfully raise the plea of determination of tenancy on the ground of merger of his lessee's estate in that of the estate of the landlord. It is, thus, clear that there is no substance in the contention of the learned counsel for the appellants that in the case on hand, it should have been held that the tenancy stood determined and the application of the landlord for a direction to the tenant to deposit the rent in arrears should have been dismissed. The position of the appellants as tenants continue and they are bound to comply with the requirements of the Rent Control Act under which the order for deposit has been passed against them. The High Court has rightly dismissed the revision.”

12. Clear proposition of law laid down by the Hon’ble Supreme Court as quoted above, it is clear that on the



basis of purchase of some portion of the suit property by the petitioner from co-sharers, the possession does not pass in favour of the petitioner automatically unless the properties are partitioned by metes and bounds and the petitioner is put in possession upon the purchased land after passing of the final decree. The petitioner has already filed a partition suit bearing Title Suit No. 161 of 2019 for partition of land and property acquired by her by virtue of sale deed and the said suit is still pending.

13. The judgment relied upon by the petitioner is of no help to him in the facts and circumstances of the case. Accordingly, in my opinion, the petitioner being the judgment debtor cannot resist the execution of the eviction decree under provision of Order 21 Rule 97 to 101 of the CPC on the basis of the some part of suit property purchased by her from the co-sharers.

14. Accordingly, the impugned order does not require any interference by this Court. This petition stands dismissed.

perwez

(Anil Kumar Sinha, J)

AFR/NAFR	AFR
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