

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.18 of 2020

Parmanand Prasad Son of Late Banwari Lal Bhagat Resident of Village-
Babuaganj Ward No.4, P.O. and P.S.- Khagaria, District-Khagaria.

... .. Petitioner

Versus

1. Raj Kumar Gupta Son of Late Kartik Lal Sah Resident of Babuwaganj P.O. and P.S. and District-Khagaria.
2. Rajendra Prasad Gupta Son of Late Kartik Lal Sah Resident of Babuwaganj P.O. and P.S. and District-Khagaria.
3. Subhash Kumar Gupta Son of Late Kartik Lal Sah Resident of Babuwaganj P.O. and P.S. and District-Khagaria.
4. Gopal Kumar Gupta Son of Late Kartik Lal Sah Resident of Babuwaganj P.O. and P.S. and District-Khagaria.
5. Smt. Sharda Devi Daughter of Late Kartik Lal Sah Resident of Babuwaganj P.O. and P.S. and District-Khagaria.
6. Smt. Shanti Devi Daughter of Late Kartik Lal Sah Resident of Babuwaganj P.O. and P.S. and District-Khagaria.
7. Smt. Manju devi Daughter of Late Kartik Lal Sah Resident of Babuwaganj P.O. and P.S. and District-Khagaria.
8. Megha Kumari Daughter of Madan Prasad Gupta, Mother Late Nirmala Devi Resident of Babuwaganj P.O. and P.S. and District-Khagaria.
9. Varsha Kumari Daughter of Madan Prasad Gupta, Mother Late Nirmala Devi Resident of Babuwaganj P.O. and P.S. and District-Khagaria.
10. Annu Kumari Daughter of Madan Prasad Gupta, Mother Late Nirmala devi Resident of Babuwaganj P.O. and P.S. and District-Khagaria.
11. Pramod Kumar Son of Late Vidyanand Sah Resident of Biswanathganj Babuwaganj P.O. and P.S. and District-Khagaria.
12. Girdhari Kumar Son of Late Vidyanand Sah Resident of Biswanathganj Babuwaganj P.O. and P.S. and District-Khagaria.
13. Shobha Kumari Daughter of Late Vidyanand sah Resident of Biswanathganj Babuwaganj P.O. and P.S. and District-Khagaria.
14. Sudha Kumari Daughter of Late Vidyanand Sah Resident of Biswanathganj Babuwaganj P.O. and P.S. and District-Khagaria.
15. Sarita Kumari Daughter of Late Vidyanand Sah Resident of Biswanathganj Babuwaganj P.O. and P.S. and District-Khagaria.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Bishweshwar Ram, Advocate
	:	Mr. Jagdish Prasad Bhagat, Advocate
For the Respondent/s	:	Mr. Dronacharya, Sr. Advocate
	:	Mr. Argesh Kumar, Advocate



CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

18 02-05-2023 Heard Mr. Bishweshwar Ram, learned counsel for the petitioner and Mr. Dronacharya, learned senior counsel for the opposite parties.

2. This Civil Revision application has been filed against the order dated 10.01.2020, passed in Civil Miscellaneous Appeal No. 04 of 2019, by the learned 4th Additional District Judge, Khagaria, whereby order dated 20.04.2019 by the learned Munsif, Khagaria in Execution Case No. 02 of 2016, arising out of Title Suit No. 06 of 1990.

3. The suit was filed by the plaintiff-opposite parties against Vidyanand Sah for declaration of title and recovery of possession and arrears of rent. The suit property contained in Schedule-1 of the plaint as *Khata* No. 348, Plot No. 1924, area 4 *dhurs* boundaries as ***“North - Jain Maharaj”, “South - Sangat Gurudwara Baba Kashi Das”, “East - House of Mossomat Rajo Devi”*** and ***“West - Lane Nagar Palika***, and *Khata* No. 348, Plot No. 1924, area 6 *dhurs* boundaries as ***“North - House of Mossomat Rajo Devi”, “Sourth - Permanand Bhagat”, “East - Lane Nagar Palika”*** and ***“West - Plot No. 1924”*** situated at Mauza-Mathurapur, Thana No. 265, Tauzi No. 3717, P.S. & District- Khagaria, which was decreed on 06.09.2016.



4. The plaintiff-opposite parties filed an Execution Case, bearing Execution Case No. 02 of 2016 for executing the decree in terms of decree mentioned in Schedule-1.

5. The petitioner filed an application under Order XXI, Rule 97, 101 read with Section 151 of the Code of Civil Procedure against the execution of the aforesaid decree in Execution Case No. 02 of 2016. After hearing the parties, the same was dismissed on 20.04.2019 by the learned Court of Munsif, Khagaria, thereafter, the petitioner moved before the Appellate Court *vide* Civil Miscellaneous Appeal No. 04 of 2019, which was also dismissed by the learned Additional Judge, IV, Khagaria on 10.01.2020 and against that the petitioner filed the instant Civil Revision application.

6. Learned counsel for the petitioner submits that the petitioner was not the party to the suit. The petitioner put resistance before the Executing Court in execution of the decree for delivery of possession. It is submitted that the petitioner purchased the land of *Khata* No. 348, Plot No. 1924 with an area of 1 *katha* 6 *dhurs* on 27.07.1982 from Sri Haribans Prasad Bhagat with a definite boundaries as “***North - House of Mossomat Rajo Devi***”, “***South - Rasta***”, “***East - Gali***” and “***West - Sangat Gurudwara Kashi Das***”. It is further submitted



that after the purchase of the aforesaid piece of land the petitioner's name was mutated and on payment of rent, rent receipt was granted by the Office of *Anchal-Adhikar*, Khagari. It is further submitted that there is no connection with the land of the original defendant, namely, Vidyanand Sah or his heirs or successor in interest. His property is different as he was the purchaser from Sri Haribans Prasad Bhagat through registered sale deed dated 27.07.1982. It is further submitted that the petitioner's sale deed was earlier to the plaintiff-opposite parties. However, the aforesaid sale deed was not subject matter of Title Suit No. 06 of 1990.

7. Learned counsel for the plaintiff-opposite parties submits that after the death of Vidyanand Sah his heirs were substituted and against that the plaintiff-decreeholder filed an Execution Case bearing Execution Case No. 02 of 2016. It is further submitted that the suit property purchased by the plaintiff-opposite party from Most. Rajo Devi through registered Sale deed dated 03.03.1986 with a definite boundaries as claimed by the opposite parties.

8. The boundaries given in the decree and the boundaries mentioned in the sale deed dated 27.07.1982 are different and the Executing Court only executed the decree as



per the property mentioned in the decree situated within its boundaries.

9. In view of the facts and circumstances of the case and after perusing the decree of, Title Suit No. 06 of 1990 passed on 06.09.2016 and registered sale deed dated 27.07.1982 in favour of the petitioner, it is apparent that both the boundaries (boundaries mentioned in the decree and boundaries mentioned in the sale deed dated 27.07.1982) are different, therefore, the Executing Court is directed to execute the decree very cautiously, the property mentioned in the decree with its boundaries without affecting the boundaries of the petitioner, as stated above.

10. In the aforesaid fact and circumstance of the case, this Civil Revision application (Civil Revision No. 18 of 2020) is disposed of with the aforesaid observations.

(Khatim Reza, J)

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