

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3835 of 2011

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ASHA PRASAD Wife Of Sri Pashupati Kumar Resident Of M.I.G., 51,
Hanuman Nagar, P.S. Kankerbagh, Lohia Nagar, P.S. Patrakar Nagar, Town
And District - Patna

... .. Petitioner/s

Versus

JAI PRAKASH NAGAR SAKHARI NIRM Son Of Late Ram Lakhn
Sharma 5/6, North S.K. Puri, Behind Rajesh Petrol Station, P.S. Sri
Krishnapuri, Town And District - Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.-
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 23-11-2023 The respondent has refused to accept notice,

therefore, this case is ready for hearing and the same is being

heard and disposed of.

2. The present application has been filed for quashing
the order dated 22.01.2011 passed by Sub Judge-I, Patna in
Execution Case No.17 of 2006 by which the Sub Judge has
allowed the application dated 03.07.2010 filed by the judgment
debtor for recalling the order of ex.-parte hearing dated
24.07.2008

3. That the brief facts of the case is that the petitioner
decree holder was a member of the respondent judgment debtor
Jai Prakash Nagar Sahkari Grih Nirman Samity Ltd., and the
decree holder was initially allotted Plot No. 95 by the judgment



debtor and the judgment debtor further executed the sale deed dated 25.03.1983 after receiving the full consideration money of Rs. 21,000/- but later on it was detected that there was no plot being plot no. 95 and realising the fault the then Secretary allotted another plot being survey pot n. 15 vide allotment letter no.3 dated 31.03.1986 and put the decree holder in possession of the said plot. The decree holder thereafter approached the Secretary to execute the necessary sale deed in her favour. But the judgment debtor always avoided the matter on some pretext or other hence the decree holder filed Misc. Case No. 242 of 1999 before the Registrar, Cooperative Societies under Section 48 of the Bihar Co-operative Societies Act, 1935 and the case was finally decided by the Deputy Registrar [Judicial) Patna vide order dated 04.08.2000.

4. In spite of the order of the Deputy Registrar the judgment debtor-respondent did not comply the order hence the decree holder-petitioner prefer Execution Case No. 17 of 2006 before the Sub Judge-I, Patna for implementation of the said order as provided under section 51 of the Bihar Co- operative Societies Act, 1935 thereafter summons and notices were issued by the court below but the Judgment debtor refused to accept notice as per report of the process server and he chose not to



appear and hence on the prayer of the decree holder-petitioner, the court below allowed publication of the notice in the local newspaper and accordingly the same was published in August 2007 but in spite of the that the judgment debtor- respondent did not appear in the court below and lastly after a lapse of about one year of the paper publication, the case proceeded ex-parte against the judgment debtor-respondent and that too after giving much opportunity to the judgment debtor.

5. It will not be out of place to mention here that the order dated 4.8.2000 passed in Misc. Case No. 242 of 1999 has attained the finality. The judgment debtor-respondent has knowledge of the Misc. Case No. 242 of 1999 and the order dated 4.8.2000 passed in Misc. Case No. 242 of 1999 since January 2007 which is apparent from the show cause dated 22.01.2007 filed on behalf of the Judgment debtor-respondent before the Sub Divisional Magistrate, Patna in a proceeding under section 144 Cr.P.C. in Case No. 626[M] of 2006. In the said show cause at Para 14 the Secretary of the judgment debtor-respondent has stated that the 1st party i.e. the decree holder-petitioner by practicing fraud obtained an ex-parte order dated 4.8.2000 from Deputy Registrar of Co-operative Societies. But in spite of the knowledge in the year 2007 no appeal was ever



filed by the judgment debtor-respondent making the order dated 4.8.2000 a final order. Moreover the learned court below is only the executing court and the executing court has to execute the decree as it is and it has got no power to decide the right, title and interest of the parties.

6. Thereafter as per the provisions of order XXI, Rule 34 of the Code of Civil Procedure, the draft copy of the proposed sale deed prepared by the decree holder-petitioner was and submitted before the court below and the learned court below after getting it verified from the office directed to serve it on the judgment debtor- respondent and accordingly the same was sent but returned with the mark 'refused to receive' and thereafter the learned court below after complying all the procedure stated in Order XXI, Rule 34 of the Code of Civil Procedure directed to execute the sale deed vide order dated 07.05.2010 accordingly the same was registered on 18.05.2010.

7. After the registration of the sale deed by the court below in favour of the decree holder-petitioner, the judgment debtor-respondent with the malafide intention of creating hurdles for the decree holders after choosing not to appear in the proceedings at an earlier stage, appeared in the case on 03.07.2010 and filed petition, for recalling ex-parte hearing by



recalling order dated 24.07.2008, on false and baseless grounds and the decree holder filed its rejoinder dated 26.07.2010 stated the entire facts and circumstances of the case and prayed to reject the petition filed by the judgment debtor. It is pertinent to mention here that in the petition dated 03.07.2010 neither the judgment debtor has come forth to state his objection, if any, to the sale deed as registered nor he has pointed out any prejudice caused to him by the contents of the sale deed executed.

8. The petition dated 3.7.2010 for recalling ex-parte hearing by recalling order dated 24.07.2008 has been filed by the judgment debtor- respondent only with malafide intention to harass the petitioner and by the same petition judgment debtor has also mislead the learned court below as it is apparent from order dated 24.01.2007 passed by the learned court of Sub Divisional Magistrate, Patna Sadar in 626 [M] of 2006 that the judgment debtor has full knowledge of Misc. Case No. 242 of 1999 and order dated 04.08.2000 passed therein.

9. The trial court after hearing the parties has allowed the petition dated 03.07.2010 filed by the judgment debtor respondent vide order dated 22.01.2011 without assigning any reasons.

10. The petitioner also submits that the impugned



order is illegal, invalid, erroneous and fit to be quashed and set aside for the reason that the said order is without jurisdiction as the learned court below after having got the deed registered had already become functious officio and the impugned order is based on conjunctures and surmises.

11. From what has been stated above, it is apparent that the judgment-debtor is harassing the decree holders and is implicating her and her family members in false criminal case and further creating all sorts of hurdles for the decree-holder in obtaining the chirkut of the sale deed executed by the learned court below in favour of the decree holder.

12. None appeared on behalf of the sole respondent despite valid service of notice.

13. I have perused the record. From the records, it appears that the Court had become functious officio after the registration of the sale deed and therefore, the order dated 24.07.2008 could not have been recalled by the impugned order dated 22.02.2011. The action of the sole respondent is only to delay and harass the respondent and the execution case cannot be continued once the Executing Court becomes functious officio after the decree was executed.

14. This application is therefore, allowed. The



impugned order dated 22.01.2011 hereby set aside. The Court below is directed to close execution proceeding in view of the fact that the decree has already been satisfied.

(Sandeep Kumar, J)

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