

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5006 of 2017

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Md. Tayab Son of Late Md. Hussain Resident of Qr. No. D/109, Police Colony, P.S. Gardanibagh, P.O. Anisabad, District - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Secretary, Aarakashi Karamcharigan Sahkari Grih Nirman Samiti Ltd., Anishabad, Patna - 2.
3. Anwari Bano Wife of Sami Eqbal resident of D - 109, Police Colony, Anishabad, Patna - 800002.
4. Sams Tabrez Khan Son of Late Md. Ayub Khan present residing at Mohalla - Jameshwar Road, Ajmer, P.O. - Ajmer, P.S. Ajmer Dargah Sarif, District - Ajmer, Rajasthan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the Respondent/s : Mr. Amit Prakash, GA 13

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 31-07-2023 Heard the parties.

2. The petitioner has moved before this Court challenging the order dated 28.06.2016 passed by the learned Execution Munsif, Patna in Execution Case No. 1441 of 2014 by which while dismissing the petition, it held that it is not the duty of the Court to read between the lines and pass an order for removal of encroachment.

3. The short facts of the case is/are as follows:-

4. The petitioner claims to have purchased a land (D-109) in the Police Cooperative Society, Patna through registered sale deed on 12.12.2006 by one Sams Tabrez Khan (respondent no. 4).



5. However, respondent no. 3 Anwari Bano, the daughter of respondent no. 4 made objection stating that it was orally gifted to her by her father.

6. From the record, it appears that a Title Suit No. 203 of 2009 was preferred by the respondent no. 3, as informed by the learned Counsel for the petitioner.

7. The petitioner instead of contesting the Title Suit for declaration of title with respect to the land in question moved before the Joint Registrar, Cooperative Society, Patna for evicting the respondent no. 3.

8. The Joint Registrar vide an order as contained in memo no. 141 dated 31.08.2009 held that removal of encroachment is not within the domain of the concerned Court. However, while disposing of the petition of the petitioner in the concluding part, he held that from the record, it seems that the land belongs to the petitioner.

9. This gave the petitioner another chance to move before the Court of Execution Munsif, Patna in Execution Case No. 1441 of 2014 which came to be dismissed on 28.06.2016 and this Court deems and proper to incorporate the concluding part/observation:-

“Heard both sides. Perused the record and it appears from its perusal that



Md. Tayab, the DH, has purchased the property of Cooperative Society from opposite party no.3 Sams Tabrej Khan as both of them are members of Police Men Co-operative Housing Construction Society Limited. Later on opposite party no. 2 Anwari Bano is claiming the same property on the basis of oral gift made in her favour by her father opposite party no. 3 Sams Tabrej Khan. Thereafter, the DH moved to the Joint Registrar Co-operative Society regarding this dispute and an order dated 31.08.2009 has been passed in his favour and it is ascertained that Md. Tayab has genuinely purchased the property and title is found to be established in his favour. However, it is specifically written in the order that the Joint Registrar has no jurisdiction to pass any order regarding encroachment. It is clear from the perusal of the order that there is no order or direction regarding removal of encroachment or delivery of possession or recovery of possession in the impugned order and only title is found to be established in favour of the petitioner. As per section 50 of Bihar Co-operative Society Act, any order passed by authorities will be executable by the Civil Court, but at the same time the executing court cannot go behind the decree except in



exceptional circumstances as provided under the statute. Further, it is not the duty of the execution court to read between the lines as even there is no finding about the encroachment, the impugned order is mere declaration of title in favour of the DH.

In light of above facts and circumstances and on the basis of submissions of both the Counsels, this court finds that there is no direction to the executing court in furtherance of the impugned order to execute as it is mere declaration of title and hence this execution case is dismissed accordingly. Office Clerk is directed to consign the record to record room within stipulated time.”

10. Aggrieved, the present writ petition.

11. It is the case of the learned Counsel for the petitioner that though the respondent no. 3 has preferred Title Suit No. 203 of 2009, when the writ petitioner moved before the Joint Registrar, Cooperative Society, it while closing the matter observed that the claim of the petitioner on the land is established, the natural corollary for the learned Execution Munsif was to execute the order and as such, he erred in dismissing the petition.



12. Learned State Counsel, on the other hand, submits that it was not the duty of the Joint Registrar to make the observation of establishing the fact that land belongs to the petitioner *inasmuch* the same is within the domain of the Title Court to decide to whom the land belongs.

13. He as such, submits that the learned Execution Court Munsif, Patna rightly passed the order. The respondent no. 3 has already filed Title Suit No. 203 of 2009 while the petitioner has filed Eviction Suit No. 02 of 2007 as per the order of the Court of learned Execution Munsif, Patna and thus the petitioner should take the said proceedings to a logical end.

14. After hearing both the sides, this Court finds force in the submissions put forward by the learned State Counsel. The petitioner tried to circumvent the law *inasmuch* as, instead of contesting the matter and take Title in his favour from the Title Court, it took the route of Joint Registrar, Cooperative Society where the matter was disposed of but reading between the lines, as rightly pointed out by the learned Execution Munsif, he wanted it to execute the order. The learned Court rightly dismissed his prayer.

15. This Court do not find any error in the order dated 28.06.2016 passed by the learned Execution Munsif, Patna in



Execution Case No. 1441 of 2014.

16. The writ petition is dismissed.

(Rajiv Roy, J)

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