

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.294 of 2016

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1. Smt. Manjulata Mishra Wife of Sri Kumud Prasad Singh
 2. Kumud Prasad Singh S/o late Kari Singh Both Resident of Village- Diggi Kala, Kumud Nagar, P.S. Hajipur Sadar, District- Vaishali.

... .. Petitioner/s

Versus

1. Most. Munni Devi and Ors Wife of late Deochandra Sah @ Jaichandra Sah
2. Tarkeshwar Sah Son of late Deochandra Sah @ Jaichandra Sah
3. Jai Prakash Sah @ Jai Prakash Gupta S/o late Deochandra Sah @ Jaichandra Sah
4. Om Prakash Sah S/o late Deochandra Sah @ Jaichandra Sah
5. Binod Sah Son of late Deochandra Sah @ Jaichandra Sah Opposite Party Nos. 1 to 5 Resident of Village- Diggi kala Station Road, P.S. Hajipur Sadar, District- Vaishali.
6. Punam Sinha W/o Mithilesh Pandit
7. Munna Pandit S/o Madan Pandit Opposite Party No. 6 and 7 Resident of Patna Diesel Station Road Hajipur, P.S. Hajipur Sadar, District Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Surendra Kishore Thakur Ms. Y. Madhuri
For the Respondent/s	:	Mr. Waliur Rahman Mr. Sunil Kumar Singh

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL ORDER

35 11-12-2023 Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. The present civil revision application has been preferred against the order dated 05.12.2014, passed by the Additional District Judge-4, Vaishali at Hajipur in Misc.Appeal No. 12/2013, whereby the learned appellate court has allowed the appeal setting aside the order dated 20.05.2013, passed in



Misc. Case No. 10/2010 filed under Order-XXI, Rule 97 of the Code of Civil Procedure, hereinafter to be referred to as 'the CPC', whereby the miscellaneous case was dismissed with cost.

3. The petition under Order under Order-XXI, Rule 97 of the CPC was filed by the respondent which was registered as Misc. Case No. 10 of 2010 before the executing court in Execution Case No. 02 of 2009. That application was rejected by the executing court, vide order dated 20.05.2013 (Annexure-5), which was appealed against in Misc.Appeal No.12 of 2013. Vide order dated 05.12.2014, the Misc.Appeal No.12 of 2013 was allowed and the order dated 20.05.2013 was set aside and the matter was remitted back to the executing court for a fresh consideration.

4. At the very outset, it has been brought to the notice of this Court that the applicant of Order-XXI, Rule 97 of the CPC has filed a fresh suit on the averment made in the petition under Order-XXI, Rule 97 of the CPC. The matter is *sub judice* as Title Suit No. 542 of 2010 before the Civil Judge-4 (Senior Division), Vaishali at Hajipur (Annexure-6). The petitioners, who are defendants have already appeared in that suit.

5. As the issue, in fact, in the present proceeding, is



also an issue in fact in Title Suit No.542 of 2010, as such, the entire proceedings relating to the application under Order XXI, Rule 97 of the C.P.C. including the Misc. Appeal No.12/2013 have become redundant and infructuous. The Civil Court shall decide finally the issue without being prejudiced by this order. The executing court shall proceed accordingly.

6. With the observations aforesaid, the application stands disposed of.

(Nawneet Kumar Pandey, J)

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