

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.803 of 2018

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Sumitra Devi, wife of Sri Premlal Chaudhary (Daughter of Late Bilash Chaudhary) Resident of Village - Man Visunpur, P.S. - Bochahan, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. Rajendra Thakur.
2. Ratnesh Thakur.
3. Sushil Thakur.
4. Arun Thakur.

All 1 to 4 sons of Late Baidyanath Thakur.

5. Gulabwati Devi, wife of Late Baidyanath Thakur. All 1 to 5 Resident of Belsand, P.S. Belsand, District - Sitamarhi.
6. Smt. Shobha Devi, wife of Ashok Thakur and daughter of Late Baidyanath Thakur, Resident of Village Chiknauta, P.S. + District - Sheohar.
7. Hembanti Devi, wife of Late Bilash Chaudhary.
8. Shankar Chaudhary, Son of Late Bilash Chaudhary.

Both 7 and 8 resident of Village + P.S. - Belsand, District - Sitamarhi.

9. Kaushalya Devi, wife of Nagendra Chaudhary, Resident of Village - Bhutahi, P.S. Sonbarsa, District - Sitamarhi.
10. Shakuntala Devi, wife of Binod Chaudhary, Daughter of Late Bilash Chaudhary, Resident of Village Vishwanathpur, P.S. - Dumra, District - Sitamarhi.
11. Sushila Devi, wife of Binod Chaudhary, Daughter of Late Bilash Chaudhary, Resident of Village - Bhardwaj, P.S. - Belsand, District - Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tejendra Sinha, Advocate

For the Respondent/s : Mr. Sanjay Kumar No 7, Advocate



CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 20-07-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed against the order dated 24.04.2018 passed by the learned Sub-Judge, Belsand in Execution Case No. 01 of 2017 by which the Court below has rejected the petition of the petitioner filed under Order 21 Rule 29 CPC.

3. The brief facts of the case are that plaintiffs/respondent nos. 1 to 6 had filed a title suit bearing Title Suit No. 159/2005 for decree of eviction and arrears of rent/damage against legal heirs of Late Bilash Chaudhary of the suit property (room situated on area 2 dhur) which was purchased by him from Bilash Chaudhary vide Sale deed dated 04.06.2002 and came into possession and used the same as his shop. It is claimed that the suit premises was let out to Bilash Chaudhary at monthly rent of Rs. 200/-. The said rent was paid up to 15.04.2005 and then he stopped giving the rent and on asking to vacate, the same was not vacated. The original defendant died and the name of his wife, son and four daughters have also been substituted as her legal heirs/including the petitioner as defendant no. (1c). Execution of Title Eviction Suit decreed on contest in favour of



plaintiffs vide judgment and decree dated 23.03.2017. The defendants have been directed to vacate the suit premises and pay arrears of rent within 90 days. The claim of the petitioner is that she had not received any notice either through Nazarat Summon or Registered card as the address was wrongly mentioned. The publication of notice in 'Janki Times' newspaper is not in circulation in her area.

4. The petitioner claimed that in the year 2017, she came to know about the *ex parte* decree against the petitioner and she filed Miscellaneous Case No. 01 of 2017 on 20.05.2017 under Order IX Rule 13 of C.P.C. In the meantime, decree holder filed Execution Case No. 01 of 2017 for execution of the order/judgment in favour of the decree holder. She also filed a petition dated 17.11.2017 under Order 21 Rule 29 CPC to stay the further proceeding of the execution case till the disposal of the Miscellaneous Case No. 01 of 2017 but the same was dismissed vide the impugned order.

5. Learned counsel for the petitioner submits that the petitioner was not properly served and the Court below had decreed the suit ex-parte against her for which she has filed the petition under Order 9 Rule 13 CPC which is pending for disposal in the Court below. In case the execution of the decree is not



stayed the whole purpose of filing an application under Order 9 Rule 13 CPC would be defeated. A proceeding under Order 9, Rule 13 CPC is included in the other proceeding appearing under Section 144 CPC and when a decree of *ex-parte* is set aside under Order 9 Rule 13 CPC, the party is entitled to the benefit of a restitution under Section 144 CPC.

6. Per contra, learned counsel for appearing respondents submits that Order 9 Rule 13 CPC proceeding is not a suit but is a Miscellaneous proceeding accordingly Order 21 Rule 29 CPC will not applicable in the facts and circumstances of the case. The petitioner in this execution case appeared on the same address on which the notice was issued in title suit accordingly there is no merit in the claim of the petitioner that she was not served. The petitioner has no interest in the subject matter of the dispute and has filed the petition *mala fide* to linger on the execution proceeding. He further submits that there is no jurisdictional error or illegality in the impugned order and the learned Court below rightly rejected the petition of the petitioner by a reasoned order. The defence of defendants is that Bilash Chaudhary was mentally ill and was under treatment. Baidynath Thakur got the sale deed executed after getting Bilash Chaudhary into intoxicated condition without paying consideration money and possession was not



delivered to plaintiffs. The appeal being Title Appeal No. 19 of 2017 filed by defendant nos. 1 and 2 i.e., mother and brother of petitioner in which petitioner was party as Respondent 2nd party was also dismissed by the learned District Judge, Sitamarhi vide order dated 19.11.2019.

7. The law is well settled that the grant of stay is discretionary and the same will have to be ordered with due care and caution. The principles which govern stay of execution in general ought to be the principles which would govern the stay of execution under Order 21 Rule 29 CPC. In the absence of extraordinary circumstances the extra ordinary relief under the provision could not be granted. The fundamental consideration is that the decree has obtained by a party and he should not be deprived of the fruits of that decree except for good reasons. Until that decree is set aside, it stands good and it should not lightly dealt with. The decree must be allowed to be executed, and only an extraordinary case is made out, no stay should be granted. Even if stay is granted, it must be on suitable terms, so that the earlier decree is not stifled.

8. Once a party succeeds in a suit, and obtains a decree in her/his favour, the effort of the Court has at all times, to see that the decree is executed and that execution of the decree is not



impeded or hindered to technical considerations. The approach that the Court adopts during the course of a trial in a suit is qualitatively different from the approach to be adopted while dealing execution proceedings.

9. The learned Court below rightly noted that the fundamental consideration for application of Order 21 Rule 29 CPC is that when a decree has been passed by a Court in favour of a party, he should not be, except there are extraordinary circumstances, deprived of enjoining the fruits of the decree except the good reason. The learned Court below observed that petitioner was substituted defendant in original title suit and on given address, notice/summon was issued in original title suit as well as in present execution, petitioner appeared and filed the petition with intention to lingering the execution proceeding which is against the intention of provision of Order 21 Rule 29 CPC.

10. In the present case, the decree holders are not able to enjoy the fruits of the decree and refusal to stay of execution proceedings by the learned Court below is within his jurisdiction and there is no illegality in the impugned order which requires interference by this Court in its supervisory jurisdiction under Article 227 of the constitution of India. The Civil Miscellaneous Application is devoid of merit.



11. This Civil Miscellaneous Application is, accordingly,
dismissed with no order as to costs.

12. The stay of further proceeding of Execution Case
No. 01 of 2007 vide order dated 11.12.2018/subsequent orders, if
any, stands vacated. The Interlocutory Application, if any, also
stands disposed of.

(Sunil Dutta Mishra, J)

Anand Kr.

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

