

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.635 of 2017**

1. Veena Sinha, Wife of Late Manoj Kumar Sinha.
 2. Kaushal Jay, Son of Late Manoj Kumar Sinha.
 3. Raushan Abhay, Son of Late Manoj Kumar Sinha.
 4. Abhishek Kumar, Son of Late Manoj Kumar Sinha.
- All are resident of Mohalla- Kameshwar Market, Station Road, Darbhanga,
Police Station- L.N.M. University Darbhanga, District- Darbhanga.

... .. Petitioner/s

Versus

Shiv Chandra Mishra, Son of Gunand Mishra, Resident of Village- Bajitpur,
Police Station- Kamtaul, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Karna, Advocate

For the Respondent/s : Mr. Barun Kumar Choudhary, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER**

5 06-07-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed against the order dated 23.01.2017 passed in Eviction Execution Case No. 2 of 2013 by the learned Munsif-1st, Darbhanga whereby and whereunder the learned Court below directed for execution of delivery of possession of Shop No. 4 in question.

3. The brief facts of the case are that respondent/decreed holder had filed the eviction suit bearing Eviction Suit No. 18/02 against the father of the petitioners before the Court of Munsif, Darbhanga which has been decreed against the petitioners who were substituted in place of their father on his death. The respondent/decreed holder filed



execution petition bearing Eviction Execution Case No. 02/2013 in which Execution Court Munsif-I, Darbhanga had directed the execution of delivery of possession on 04.03.2016 and accordingly writ for delivery of possession was issued. The Najir of Civil Court, Darbhanga submitted a report with respect to identification of suit premises and requested the Court to appoint the survey knowing Advocate Commissioner and Government Amin for the purpose of identification of suit premises. The decree holder filed an objection petition stating that there is no necessity to appoint survey knowing Advocate Commissioner and Government Amin. The said objection petition was allowed vide the impugned order dated 23.01.2017 with a direction to deposit the Nazir cost and to submit the requisites of writ for D.P. Proceeding.

4. Learned counsel for the petitioners submits that the learned Court below has passed the order of execution of possession of only Shop No. 4 from 8 Dhur 60 Dhurki land without mentioning the complete boundary of the land by the decree-holder. The learned Court below also ignored the report of Najir and passed the fresh order vide the impugned order that the appointment of Survey knowing Advocate Commissioner and Government Amin for the purpose of identification of the



land and Shop No. 4 in question was not necessary. He further submits that the learned Court below passed the order mechanically and is liable to be set aside.

5. On the other hand, learned counsel for the respondent submits that there is no illegality in the impugned order. The Najir had been directed to execute the writ for delivery of possession and that there is no ambiguity in the identification of Shop No. 4 in question and Najir report has been considered and the said report cannot override the order of the Court except to assist the Court.

6. Having heard the learned counsel for the parties and on perusal of the impugned order, it appears that Eviction Suit No. 18/02 had been disposed of vide order dated 29.06.2012 in which there was direction to the petitioners to vacate the Shop No. 4 in question and the Eviction Execution No. 02/2013 has been filed for the same in which the learned Court below issued the writ for delivery of possession but the Najir of the Court gave his report and suggestion with respect to identification of suit premises. Learned Court below vide the impugned order again issued the writ for delivery of possession considering the facts and circumstances of the case, the impugned order is reasoned order and there is no jurisdictional



error or illegality and the application of the petitioners are devoid of merit and liable to be dismissed.

7. This Civil Miscellaneous Application is accordingly, dismissed. The stay order dated 10.07.2017 passed in this case by this Court stands vacated.

(Sunil Dutta Mishra, J)

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