

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1241 of 2017

1. Sachchida Nand
2. Jai Kishore Prasad Singh,
Both sons of Late Devi Lal Singh, Resdient of Village- Kash Nagar,
P.S.- Sonbarsa, District- Saharsa, At present Opposite Bari Maszid, Thana
Road Khagaria, P.S. and District- Khagaria.

... .. Petitioner/s

Versus

1. Indra Deo Prasad son of Late Ayodhya Prasad Sah,
2. Sanjay Kumar,
3. Ritesh Kumar,
Both sons of Indra Deo Prasad, All residents of Mohalla-
Hajipur, Ward No.-4 Old New Ward No.20, P.O.P.S. and District- Khagaria.
4. Manju Prasad, wife of Dr. Awadhesh Prasad, Daughter of Late Yugal
Kishore Mahto, resident of Mohalla- Ram Chandrapur, P.O. and P.S.-
Biharsharif, District- Nalanda.
5. Raj Kishore Prasad, son of Late Yugal Kishore Mahto, All residents of
Mohalla- Hajipur, Ward No.-4 Old New Ward No.18, P.O.P.S. and District-
Khagaria.
6. Braj Kishore Prasad, son of Late Yugal Kishore Mahto, Reident of Village-
Kashnagar, P.S.- Sonbarsa, District- Saharsa, at present Daud Nagar
Dispensary, P.O. and P.S.- Daudnagar, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dronacharya, Sr. Advocate
For the Respondent/s	:	Mr. Parth Gaurav, Advocate
		Mr. Anshu Raj Singh, Advocate
		Mr. Kumar Saurav, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 27-03-2024

Heard learned senior counsel for the petitioners and
learned counsel for the respondents and I intend to dispose of
the present civil miscellaneous petition at the stage of admission
itself.



2. The present petition has been filed under Article 227 of the Constitution of India against the order dated 01.04.2017 passed by the learned Sub Judge III, Khagaria in Title Execution Suit No. 01 of 2012 by which the learned Court below has rejected the application dated 07.01.2017 filed by the petitioner for instituting a miscellaneous case and to decide the matter in accordance with law.

3. Learned senior counsel appearing on behalf of the petitioners submits that the petitioners filed an application under Order 21 Rule 97 read with 101 of the Code of Civil Procedure (in short 'the Code') in Title Execution Case No. 01 of 2012 with prayer to add them as intervenor and further to stay the proceeding of Execution Case No. 01 of 2012 till final decision over the petitioner's application dated 18.01.2014.

4. The said Title Execution Case No. 01 of 2012 has been filed for execution of judgment and decree in Civil Appeal No. 212 of 2006 passed by the learned Additional District and Sessions Judge, F.T.C-I, Khagaria whereby the learned 1st Appellate Court has set aside the judgment and decree passed by the learned Sub Judge III, Khagaria in Title Suit No. 06 of 1993. The judgment debtor preferred Second Appeal and moved



before the Hon'ble Supreme Court by filing Special Leave Petition but did not get any succour either from this Court or from the Hon'ble Supreme Court. Learned senior counsel further submits that the petitioners have not been made party in the original suit but they were having title and possession over the suit property and were in possession when the execution proceeding started. Learned senior counsel further submits that the claim of the petitioners is based on the fact that the decree holder was not having any right over the property in possession of the petitioners since the property belongs to one Sukhilal Mahto, common ancestor of the parties and father of Late Yugal Kishore Mahto, who was the original defendant No. 1 and till date there has not been any partition between the parties. For this reason the decree was not executable against the petitioners. Against the petition dated 18.01.2014, a rejoinder was filed by the decree holders denying the claim of the petitioners and it has been submitted on behalf of the decree holder that the suit property was acquired by Yugal Kishore Mahto on 7.12.1952 through registered sale deed which was subsequently transferred to Radha Devi @ Anuradha Devi on 30.12.1971 who had executed the sale deed dated 26.11.1990 in favour of the plaintiff and the suit property was self acquired which has been



confirmed up to the stage of second appeal.

5. Learned senior counsel further submits that on the basis of order dated 13.03.2015 the decree holder along with Nazir of the Civil Court tried to interfere with the possession of the petitioners and accordingly, the petitioners prayed to stay the order of delivery of possession and to decide the matter after hearing all the parties. However, the learned Sub Judge III, Khagaria dismissed the application dated 18.01.2014 with the impugned order dated 13.03.2015 on the ground that the intervenors had filed petition for adding them as parties in the Execution case but it would not be proper to make them parties at this stage. The said order was challenged by filing Civil Writ Jurisdiction Case No. 6600 of 2015 by the petitioners and the order of the learned Executing Court was set aside and the writ petition was allowed by order dated 08.10.2015 with direction to consider afresh the petition dated 18.01.2014 filed by the petitioners in accordance with law. Thereafter, the petitioners filed another application on 07.01.2017 with prayer that a miscellaneous case be registered on the basis of petition dated 18.01.2014 filed by the petitioners. After hearing the parties, the petition dated 07.01.2017 was dismissed by order dated



01.04.2017 by the learned Sub Judge III, Khagaria.

6. The learned senior counsel further submits that the order dated 01.04.2017 of the learned Sub Judge III, Khagaria is against the provisions of law and based on personal perception of the learned Sub Judge. The learned Trial Court did not appreciate the fact that the petition of the petitioners ought to be decided under the provisions of Order 21 Rule 97 and 101 of the Code which empowers the Court to institute a miscellaneous case for disposal of the objections raised by the petitioners. The learned Trial Court also ignored the orders of this Court passed in C.W.J.C. No. 6600 of 2015. The learned senior counsel further submits that the petitioners have raised certain triable issues which needs to be decided by the learned Executing Court and for this purpose institution of a miscellaneous judicial case was necessary. Further, Rule 459 of the Civil Court Rules framed by the Hon'ble High Court provides for institution of miscellaneous judicial case under Section 74 or Order 21 Rule 97 and other allied Rules of the Code. Learned senior counsel further submits that maintainability of the petition filed by the petitioners in view of Rule 459 of the Civil Court Rules framed by the Hon'ble Patna High Court is the issue which was to be determined by the Executing Court and which has clearly failed



to do so. By making the observation without any substance that the petitioners were only interested in multiplying the proceedings, the petition dated 07.01.2017 was rejected. Thus the learned senior counsel submits that on the aforesaid grounds, the impugned order is bad, illegal and has been passed without application of judicial mind and is liable to be set aside.

7. Learned counsel appearing for the respondents submits that there is settled legal position that when any objection is filed under Order 21 Rule 97 of the Code and under the relevant provisions of law, a miscellaneous case is required to be instituted. But the same is not a position in the present case since the petitioners have failed to show any *prima facie* case in their favour while moving the application dated 18.01.2014. Learned counsel further submits that the respondents have denied the claim of title, ownership and possession of the petitioners and as the petitioners have failed to bring on record any documents or further failed to show any existence of any *prima facie* case in their favour, the said application cannot be converted into a miscellaneous case. Each and every application filed under Order 21 Rules 97-106 would not be giving an occasion to institute a miscellaneous case since the law does not contemplate the same. Only when the petitioners/objectors could



show some merit in their case then only a miscellaneous case is required to be registered. Learned counsel for the respondents further submits that the order dated 08.10.2015 passed in C.W.J.C. No. 6600 of 2015 was basically on the point that the petition of the objectors was rejected on the ground that they could not be impleaded as intervenors in the execution proceedings and on this aspect the writ was allowed. Learned counsel further submits that moreover, only the petition of the petitioners for instituting the miscellaneous case on the basis of petition dated 18.01.2014 has been rejected and the petition dated 18.01.2014 is still pending before the learned Executing Court and is yet to be disposed of. Thus, the learned counsel submits that there is no infirmity in the impugned order and the same be sustained.

8. I have given my thoughtful consideration to the rival submissions and different aspect of the matter.

Now Order 21 Rule 97 provides as under :

97. Resistance or obstruction to possession of immovable property.

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining



possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

[(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

9. In case of ***Brahmdeo Choudhary vs Rishikesh Prasad Jaiswal and another*** reported in ***AIR 1997 SC 856***, ***Shreenath and another vs. Rajesh and others*** reported in ***AIR 1998 SC 1827*** and ***Silverline Forum Pvt. Ltd vs. Rajiv Trust and another*** reported in ***AIR 1998 SC 1754*** the Hon'ble Supreme Court has clearly held that even a stranger can maintain an application under Order 21 Rule 97 to 106 and all issues regarding title, ownership and possession are to be decided in the same execution proceeding. Further, Rule 459 of the Civil Court Rules framed by the Hon'ble High Court provides for institution of miscellaneous case in certain situation and the present case being one such case where certain objections have been raised by the objectors on the ground of their title and possession which needs to be looked into by the learned Executing Court. No doubt *prima face* material must be brought on record to allow the Executing Court to consider the prayer of the objectors but in the present case when specific averments



have been made regarding title and possession and it has also come on record that the possession of the petitioners was sought to be disturbed by the decree holder and the officials of the Court, it gives right to the objectors/petitioners to get their claim adjudicated in the execution proceeding under Order 21 Rule 97 of the Code. Moreover, if the parties were found in possession during execution proceeding being carried out towards delivery of possession, the claim of such person would be dealt with by the executing Court in the manner provided under the relevant statutory provisions.

10. Hence I think the learned Trial Court erred while rejecting the application dated 07.01.2017 with the impugned Order only on the ground that the petitioners want to get a miscellaneous case registered and wants their miscellaneous case to run separately from the execution proceeding which would result in multiplicity of proceeding and hence the said order, in my opinion, can be said to be correct.

11. Hence the impugned dated 01.04.2017 passed by the learned Sub Judge III, Khagaria in Title Execution Suit No. 01 of 2012 is set aside. The learned Trial Court is directed to institute a miscellaneous case on the basis of the petition dated



18.01.2014 and thereafter, proceed to adjudicate the claim of the objectors within next six months.

12. With the above direction, the present petition stands allowed.

(Arun Kumar Jha, J)

Prakash/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	
Transmission Date	

