

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1327 of 2017

Chinta Mani Devi wife of Late Ganesh Prasad Singh, Resident of Chandki,
P.S.- Sangrampur Harpur, District- Munger.

... .. Petitioner/s

Versus

- 1.1. Ahilya Devi W/o- Late Upendra Singh Resident of Village- Chandki, P.S.- Sangrampur Harpur, District- Munger.
- 1.2. Dharbendra Kumar Son of Late Upendra Singh Resident of Village- Chandki, P.S.- Sangrampur Harpur, District- Munger.
- 1.3. Ravindra Kumar Son of Late Upendra Singh Resident of Village- Chandki, P.S.- Sangrampur Harpur, District- Munger.
- 1.4. Birendra Kumar Son of Late Upendra Singh Resident of Village- Chandki, P.S.- Sangrampur Harpur, District- Munger.
- 1.5. Surendra Kumar Son of Late Upendra Singh Resident of Village- Chandki, P.S.- Sangrampur Harpur, District- Munger.
- 1.6. Sweti Devi D/o Late Upendra Singh, W/o Rajiv Singh Resident of Village- Situhar, P.S.- Kharagpur, District- Munger.
2. Shashi Shekhar Singh, Son of Gulabi Singh Resident of Village- Chandki, P.S.- Sangrampur Harpur, District- Munger.
- 3.1. Kiran Devi W/o- Late Chandra Shekhar Singh Resident of Village- Chandki, P.S.- Sangrampur Harpur, District- Munger.
- 3.2. Durgesh Kumar S/o Late Chandra Shekhar Singh Resident of Village- Chandki, P.S.- Sangrampur Harpur, District- Munger.
- 3.3. Devesh Kumar S/o Late Chandra Shekhar Singh Resident of Village- Chandki, P.S.- Sangrampur Harpur, District- Munger.
- 3.4. Pappy Devi D/o- Late Chandra Shekhar Singh, W/o- Raj Kumar Singh Resident of Village- Manjhgay, P.S.- Sangrampur, District- Munger.
- 3.5. Sarita Devi D/o Late Chandra Shekhar Singh, W/o- Jai Kishore Singh Resident of Village- Baidhpur, P.S.- Shambhuganj, District- Banka.
- 3.6. Puja Devi D/o Late Chandra Shekhar Singh, W/o- Ranvir Singh Resident of Village- Chandpura, P.S.- Sangrampur, District- Munger.
4. Nityanand Singh, Son of Gulabi Singh, Resident of Village- Chandki, P.S.- Sangrampur Harpur, District- Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Sevak Choudhary, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 10-09-2024



Heard learned counsel for the petitioner.

02. Despite proper service of notice, no one appeared for the respondents.

03. The present petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 26.05.2017 passed by learned Munsif 1st, Munger in Misc. Case No. 06 of 2010 and also for setting aside the order dated 03.11.2006 passed in Title Execution Case No. 02 of 1995.

04. Learned counsel for the petitioner submits that the petitioner was plaintiff before the learned trial court. The plaintiff/petitioner purchased 19 *katha* land from one Urmila Devi *vide* a sale deed dated 01.09.1989 in the northern part of the land having total area of 1 bigha 19 *katha*. Remaining 1 bigha land was sold by Urmila Devi by two sale deeds dated 11.09.1989 to defendant 1st party. However, some dispute arose and the plaintiff/petitioner filed a title suit and the said suit was decreed on contesting in favour of the plaintiff/petitioner. Title appeal filed against the judgment and decree of the title suit by the defendant 1st party was dismissed. Thereafter, the plaintiff/petitioner filed Execution Case No. 02 of 1995 for execution of decree of 1994. An objection petition was filed under Section 47 and Order 21 Rule 23 of the Code of Civil Procedure by the opposite party. The learned Executing Court granted liberty to the judgment debtors to get the



suit land measured scientifically. Thereafter, several dates passed but the judgment debtors did not deposit the required fee. Subsequently, the learned Executing Court *vide* order dated 10.03.2000 ordered for issuance of D.P. Thereafter, on several dates, the matter was adjourned and lastly *vide* order dated 03.11.2006, learned executing court dismissed the execution case holding that no *pairvi* was being made by the decree holder since 07.02.2004. But the plaintiff/ petitioner had been suffering from serious illness and after her recovery, she enquired about her case from her *pairvikar* but her *pairvikar* did not disclose anything and thereafter, the learned counsel for the plaintiff/petitioner filed inspection slip for inspection of the records on 26.06.2010 and in this manner the petitioner came to know about dismissal of her case due to lack of *pairvi*. In this background, the plaintiff/petitioner filed a miscellaneous petition supported with limitation petition bearing Misc. Case No. 06 of 2010. However, after hearing the parties, the learned Munsif-1st dismissed the Misc. Case No. 06 of 2010.

05. Learned counsel for the plaintiff/petitioner submits that the learned trial court dismissed the miscellaneous case on erroneous ground. The learned trial court took into consideration the fact that the miscellaneous case was filed after much delay but the petition for condonation of delay was filed and the same was



allowed thereafter, the matter was fixed for hearing and orders. On this account, the order of the learned trial court is against the provisions of law as delay already stands condoned. Learned counsel further submits that the trial court has stated that there have been delay of more than three years and the same is not explained. But the learned trial court has failed to appreciate that the plaintiff/petitioner has already deposited the cost in the *Nazarat* with all relevant documents and after deposition of cost the Executing Court has ordered for issuance of D.P. and for this reason the appearance of the plaintiff/ petitioner was not necessary. Learned counsel further submits that learned trial court has also failed to appreciate that the judgment and decree dated 11.02.1994 attained finality and order of dismissal of the execution on the ground of non appearance of the plaintiff/petitioner is bad in the eye of law and it would deny the plaintiff/petitioner the fruit of decree. Thus, the learned counsel submits that in the aforesaid facts and circumstances, the impugned order is not sustainable and should be set aside.

06. I have given my thoughtful consideration to the submission made on behalf of the petitioner and also perused the records. The learned Executing Court dismissed the miscellaneous case and the execution case of the petitioner on the ground that the plaintiff/petitioner failed to make proper *pairvi* in the execution



case and thereafter failed to show reasonable ground for waiver of the limitation period and also failed to show any document in support of her claim. Without further entering into the factual aspects of the matter and considering the fact that judgment and decree has been passed in favour of the plaintiff/petitioner and the same has attained finality and if the plaintiff/petitioner is not allowed to get the decree executed, the judgment and decree would become barren for the plaintiff/petitioner and she would be seriously prejudiced and would suffer irreparable loss, I am of the view that the whole exercise of passing the decree in favour of the plaintiff/petitioner could not be allowed to become a futile exercise.

07. Hence, for ends of justice, the impugned orders dated 26.05.2017 and 03.11.2006 are set aside and the Execution Case No. 02 of 1995 is restored to its original file.

08. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.09.2024
Transmission Date	N/A

