

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1417 of 2018

1. Narendra Sharma Son of Late Chaturi Singh
2. Navin Kriti Son of Narendra Sharma
3. Nek Kriti Son of Narendra Sharma All residents of Village - Pranpur, Post Office - Belaganj, Police Station - Belaganj, District - Gaya.
4. Priyanka Kumari Daughter of Naresh Sharma and wife of Pradhan Kant Resident of Village - Nunai, Post Office - Makhar, Police Station - Akbarpur, District - Nawada.

... .. Petitioners

Versus

1. Kaushal Kumar Son of Narmadeshwar Sharma Resident of Village - Mushi, Police Station - Tekari, District - Gaya.
2. Sambhu Lal Agrawal Son of Late Anant Lal Agrawal
3. Sri Vishwanath Lal Agrawal Son of Late Anant Lal Agrawal Both residents of Village and Post Office - Belaganj, Police Station - Belaganj, District - Gaya at present of Kirana Dukan near Agrawal Hotel Station Road, Patna.
4. Most. Rabita Devi Wife of Late Arjun Lal Resident of Village and Post Office - Belaganj, Police Station - Belaganj, District - Gaya.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. J. S. Arora, Sr. Advocate Mr. Manoj Kumar, Advocate
For the Respondent/s	:	Mr. P. N. Shahi, Sr. Advocate Mr. Mrigendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 29-10-2024

The present petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 03.08.2018 passed by the learned Sub Judge-IV, Gaya in Execution Case No. 05 of 2012, whereby and whereunder the objection with regard to the maintainability of execution case filed by the petitioners under Section 47 of the Code of Civil Procedure, 1908 (for short 'the Code') has been rejected.



02. The brief facts of the case, as it appears from the petition, are that one Kusum Devi, wife of petitioner, Narendra Sharma, and mother of petitioner nos. 2, 3 and 4, was purchaser of a piece of land from respondent no. 4 through a registered deed of sale dated 11.08.1998 with regard to 15 ½ decimal of land of *Plot No. 467, Khata No. 4 and Thana-Belaganj, District-Gaya*. Further claim of the petitioners is that respondent no. 4 filed a Title Partition Suit No. 146 of 1992 for 50% share in the joint family property as given in the plaint of the said suit which included the aforesaid 15 ½ decimal of land which was sold to Kusum Devi. The defendants of the suit challenged the genealogy and claim of the respondent no. 4. In the said suit, a preliminary decree was passed and the respondent no. 4 was granted 50% share in the property mentioned in the suit. Pursuant to the said preliminary decree, respondent no. 4 had sold aforesaid 15 ½ decimal of land of Plot No. 467 to Kusum Devi (since deceased). However, it appears that the petitioners claimed that in the said suit later on a compromise petition was filed and thereafter in terms of compromise the said suit was decreed and disposed of. The petitioners further claimed that Plot No. 467 was having a total area of 8 *kattha* and out of that respondent no. 4 had sold only 50% share, i.e., 15 ½ decimal



land. The said land came in exclusive possession of Kusum Devi and after her demise, it came in possession of her legal heirs/representatives, who are the petitioners in the present case. A boundary wall was constructed on the entire piece of land and 09 shops have also been constructed and shops are running in the said premises. There is also a cattle farm on the open area of the said land. Further case of the petitioners is that in the compromise deed, 50% share of the respondent no. 4 was admitted but pursuant to her share, she has been allotted only Plot Nos. 704 and 707 of the properties in Patna, Belaganj and Pranpur with no claim of other properties. Respondent no. 4 denied the compromise. Further case of the petitioners is that respondent no. 1 claims to have purchased the entire land of Plot No. 467 having an area of 31 decimal, which includes the land purchased by late Kusum Devi through the sale deed dated 11.08.1998 executed by respondent no. 4, Rabita Devi. For the said land, another sale deed dated 30.04.2004 was executed in favour of respondent no. 1 by respondent nos. 2 and 3. Thereafter, respondent no. 1 filed Title Suit No. 212 of 2008/114 of 2005 seeking declaration of his right, title and interest over the suit land mentioned in Schedule-II of the plaint and further sought the sale deed dated 11.08.1998 executed by



defendant no. 3 in favour of defendant no. 4 to be declared as inoperative and fraudulent and further sought declaration that defendant no. 4 has no right, title and interest over the suit land. The suit was dismissed and aggrieved by the dismissal of the said suit, the respondent no. 1 preferred an appeal bearing Title Appeal No. 17 of 2010/ 103 of 2008. The said appeal was allowed vide judgment and decree dated 12.06.2012 and 27.06.2012, respectively. Against the said judgment and decree dated 12.06.2012 and 27.06.2012 passed in Title Appeal No. 17 of 2010/ 103 of 2008, Kusum Devi preferred second appeal before this Court vide Second Appeal No. 404 of 2012 but the same was also dismissed vide order date 22.10.2013. This dismissal order was challenged by Kusum Devi before the Hon'ble Supreme Court by filing Special Leave Petition No. 20647 of 2014 but the same was also dismissed on 18.09.2015. Meanwhile, respondent no. 1 filed an execution case bearing Execution Case No. 05 of 2012 pursuant to the decree passed in Title Appeal No. 17 of 2010/ 103 of 2008. Objection to the execution proceeding was raised by filing Misc. Case No. 01 of 2016 regarding the maintainability of the execution case but the said miscellaneous case was dismissed by the learned executing court vide order dated 15.03.2018. Against the order dated



15.03.2018, the petitioners along with respondent no. 4 filed Civil Misc. No. 547 of 2018, which was dismissed as withdrawn with liberty to the petitioners to take alternative lawful recourse. Thereafter, in the light of the order of this Court passed in Civil Misc. No. 547 of 2018, a petition under Section 47 of the Code was filed before the learned executing court with regard to execution discharge or satisfaction of the decree on 16.05.2018. A rejoinder to the said petition was filed by respondent no. 1 on 18.05.2018. The parties were heard and the learned executing court vide order dated 03.08.2018, rejected the said petition. The said order is under challenge before this Court in the present petition.

03. Learned senior counsel, Mr. J. S. Arora, appearing on behalf of the petitioners submitted that the learned executing court has wrongly passed the impugned order without appreciating the facts on record. The learned executing court has committed jurisdictional error as it has not considered that there has been no executable decree so as to proceed with Execution Case No. 05 of 2012. The learned executing court has also not considered the fact that there was no decree to the effect to dispossess the petitioners and to give delivery of possession to the respondent no. 1. Mr. Arora further submitted that the suit of



the respondent no. 1 was dismissed before the learned trial court and while allowing the appeal, the learned first appellate court did not pass any order except stating that the decree of the learned trial court is set aside. There has been no order that the suit is decreed or what reliefs have been granted to the plaintiff/appellant. The judgment and decree of the learned first appellate court is against the provisions of law. Order 41 Rule 35(2) of the Code provides that an appellate court, while allowing the appeal, has to specify which reliefs have been granted to the appellant. But there has been no specific relief granted to the appellant/respondent no. 1 herein with regard to recovery of possession of the suit property. On the other hand, the learned first appellate court recorded its finding that sale deed dated 30.04.2004 executed by defendants/respondent nos. 2 and 3 herein in favour of appellant/plaintiff is valid and genuine and thus, the appellant/plaintiff has got valid right, title, interest and possession over the suit land. As such, the learned first appellate court did not grant any relief to the plaintiff/appellant for recovery of possession. Mr. Arora further submitted that in execution case, the decree-holder further made prayer to direct the judgment debtor to pay total collateral amount of cost Rs. 7831/- to decree holder and also for arrest



and attention in civil prison of judgment debtor if she does not comply with the decree or any such order or orders made by the court for realization and satisfaction of the decree under execution. But there was no such decree in existence granting such relief to the respondent no.1 and therefore, filing of execution case with such prayer for which there was no basis is impermissible and unsustainable in the eye of law. Mr. Arora further submitted that in the impugned order, learned executing court has referred to dismissal of Misc. Case No. 01 of 2016 and considering its dismissal, went on to dismiss the petition filed before it under Section 47 of the Code without further discussion of the matter and without taking into consideration the yardstick which was required under Section 47 of the Code. Mr. Arora further submitted that the earlier miscellaneous case was filed on a number of grounds but the petition under Section 47 of the Code was filed on the limited point that decree passed by the learned appellate court did not grant relief as to recovery of possession and rather has recorded the finding that the respondent no. 1 was not dispossessed. So, the issue for consideration before the learned executing court was whether by virtue of said decree of the learned first appellate court, respondent no. 1 was entitled for recovery of possession or not?



But the said aspect was not considered by the learned executing court. Further the questions raised in connection with execution discharge or satisfaction of the decree has not been considered by the learned executing court and the impugned order is silent on these points. Further the finding that earlier order passed on 15.03.2018 was with regard to same matter is an error of record. Since the questions remained unanswered regarding execution discharge or satisfaction of the decree, a duty is cast upon the executing court to decide the matter. The order disposing of the petition of the petitioners is not sustainable for non-consideration of the ground as aforementioned. Mr. Arora further submitted that the relief which has not been granted means the said relief has been refused and there cannot be any execution of such relief. Thus, Mr. Arora submitted that there has been no executable decree and the learned trial court erred while passing the impugned order and hence, the same needs to be set aside.

04. *Per contra*, Mr. P. N. Shahi, learned senior counsel appearing on behalf of respondent no. 1 submitted that there is no infirmity in the impugned order and the same is absolutely correct and proper. Mr. Shahi further submitted that the petitioners have lost the case till the Hon'ble Supreme Court



and have been obstructing the execution proceeding by filing frivolous applications. On the same points, earlier application was filed which resulted in institution of Misc. Case No. 01 of 2016 and the same was dismissed by a reasoned order dated 15.03.2018. Against the order dated 15.03.2018, the petitioners came before this Court by filing Civil Misc. No. 547 of 2018, which was dismissed as withdrawn. Mr. Shahi further submitted that there has been protracted litigation in the present matter and the respondent no. 1 has been fighting this case for 19 years. On the plight of the decree holder, Mr. Shahi referred to the decision of Hon'ble Supreme Court in the case of ***Pradeep Mehra Vs. Harijivan J. Jethwa (Since Deceased Thr. LRS.) & Ors.***, reported in ***2023 SCC OnLine SC 1395*** wherein the Hon'ble Supreme Court in Para-13 held as under:

*“13. The reality is that pure civil matters take a long time to be decided, and regretfully it does not end with a decision, as execution of a decree is an entirely new phase in the long life of a civil litigation. The inordinate delay, which is universally caused throughout India in the execution of a decree, has been a cause of concern with this Court for several years. In ***Rahul S. Shah v. Jinendra Kumar Gandhi, (2021) 6 SCC 418***, this Court had observed that a remedy which is provided for preventing injustice (in the Civil Procedure Code) is in fact*



being misused to cause injustice by preventing timely implementation of orders and execution of decrees. Then, it had observed as under:

“23. The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.””

Mr. Shahi next submitted that there is no requirement for passing specific orders for recovery of possession if the plaintiff/appellant is not found in possession. Such prayer has been made in the plaint and there is no ambiguity on this point. Mr. Shahi further referred to the decision of Hon'ble Supreme Court in the case of ***Babu Lal v. Hazari Lal Kishori Lal***, reported in ***(1982) 1 SCC 525*** wherein it has been held that in appropriate cases of specific performance of contract of sale of immovable property, court is competent to order for delivery of possession of the property, even if not specifically asked for, by allowing suitable amendment in the plaint and it has further been held that order for delivery of possession without corresponding amendment in the plaint would be a mere omission, not fatal to the relief of possession. On the same proposition about no express direction for delivery of possession incorporated in the decree, learned senior counsel referred to the



decision of the High Court of Orissa in the case of ***Biswanath Vs. Uttara Bewa and Ors***, reported in ***AIR 1988 Ori 9***, wherein the learned Single Judge has held that ordinarily the executing court cannot go behind the decree. But it is within the competence of the executing court to interpret the decree sought to be executed and for doing so the court can refer to reliefs sought in the plaint and discussion in the judgment to ascertain the true import of the decree. In similar circumstances, the learned Single Judge held that the plaintiff prayed for declaration of title, confirmation of possession and in the alternative for recovery of possession of the suit land, the court found the plaintiff to be in possession of the property and accordingly passed the decree as the court did not feel the necessity to direct recovery of possession in view of its finding that the plaintiff was in possession of the suit properties. The executing court directed for recovery of possession and the learned Single Judge, thus, held that it cannot be said that the executing court travelled beyond its jurisdiction or committed any illegality.

Mr. Shahi further referred to the decision of a Co-ordinate Bench of this Court dated 10.10.2023 passed in ***Civil Misc. No. 457 of 2018 (Amir Choudhary @ Amirak***



Choudhary @ Amirka Choudhary & Ors. Vs. Kiranti Devi & Ors.) wherein the learned Co-ordinate Bench in somewhat similar circumstances, upheld the power of the learned executing court to interpret the decree and directing for grant of recovery of possession when the order dismissing the execution case for not being maintainable was challenged before it. Thus, learned counsel submitted that there is no infirmity in the impugned order and hence, the same needs to be sustained.

05. I have given my thoughtful consideration to the rival submission of the parties and different aspects of the matter in the facts and circumstances of the case. The petitioners are aggrieved by the execution proceeding which has been taking place pursuant to the judgment and decree passed in Title Appeal No. 17 of 2010/ 103 of 2008. The main challenge of the execution proceeding is on the ground that the judgment and decree of the learned first appellate court has not mentioned the specific reliefs for which the plaintiff/appellant/respondent no. 1 was entitled for. The decree passed by the learned first appellate court was prepared in following terms:

“.....It is ordered – that the present appeal and the same is here by allowed on contest with cost. Accordingly, the judgment dated 30.09.2008 and the decree



dated 16.10.2008 passed by the learned court below is hereby set-aside.”

Obviously, there is no orders for grant of any specific relief. The law is well settled that executing court could not go beyond the decree and this observation has been made by Hon'ble Apex Court in a number of cases including the case of ***Topanmal Chhotamal Vs. Kundomal Gangaram & Ors.***, reported in ***AIR 1960 SC 388*** and ***J & K Bank Ltd. & Ors. Vs. Jagdish C. Gupta*** reported in ***(2004) 10 SCC 568***. At the same time Hon'ble Supreme Court in the cases of ***Rajinder Kumar Vs. Kuldeep Singh & Ors.***, ***Mohinder Kumar Gupta vs. Kuldeep Singh & Ors.*** and ***S.K. Gupta (Dead) Through Legal Representatives & Ors. Vs. Kuldeedp Singh & Ors.*** reported in ***(2014) 15 SCC 529***, has held that if there is any ambiguity in the decree, it is for the executing court to construe the decree if necessary after referring to the judgment. If sufficient guidance is not available even from the judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree. It further held that the court cannot go behind the decree or beyond the decree but while executing a decree for specific performance, the court, in case of any ambiguity, has to necessarily construe the decree so as to give effect to the



intention of the parties. Similar to the effect is the decision of the Hon'ble Supreme Court in the case of ***Meenakshi Sexena & Anr. Vs. ECGC Limited & Anr.***, reported in ***(2018) 7 SCC 479***. In this case, the Hon'ble Supreme Court held that the whole purpose of execution proceedings is to enforce the verdict of the court. Executing court, while executing the decree, is only concerned with the execution part of it but nothing else. The court has to take the judgment at its face value. It is settled law that the executing court cannot go beyond the decree. But the difficulty arises when there is ambiguity in the decree with regard to the material aspects. Then it becomes the bounden duty of the court to interpret the decree in the process of giving a true effect to the decree. Under the circumstances, the executing court would take recourse of the judgment of the learned first appellate court granting the decree and if required even to the pleading in the plaint of the plaintiff and reliefs claimed therein.

06. Thus, the law has been settled by the aforesaid decisions of the Hon'ble Supreme Court and on this point, the contention of Mr. Arora is devoid of merit. This Court in the case of ***Smt. Dhira Mishra alias Dhira Devi and Ors. Vs. Md. Laique Ahmad and Ors. (Civil Miscellaneous Jurisdiction No.***



26 of 2019) decided on 06.02.2024 was faced with similar situation wherein the suit for specific performance was dismissed by the learned trial court and the learned first appellate court set aside the decree but the without granting any specific relief, the order was challenged in second appeal before this Court and thereafter in Special Leave Petitioner before the Hon'ble Supreme Court. This court after considering various decisions of Hon'ble Supreme Court and *Privy Council* came to a finding that even in absence of grant of specific relief, a decree would be executable.

07. Further, the facts which are also to be taken into consideration is that the suit was filed in the year 2005 by the plaintiff/appellant/respondent no. 1. The suit was dismissed in 2008. The appeal against dismissal was allowed in 2012. The judgment and decree of the learned first appellate court was affirmed by this Court in 2013. The execution case was filed in the year 2012. The Special Leave Petition of the judgment debtor was dismissed on 18.09.2015. From the record, it is apparent that the plaintiff filed the suit for declaration of his absolute right, title and interest over the suit land mentioned in Schedule-II of the plaint and the defendant no. 4 has no right, title and interest over the suit land and the registered deed dated



11.08.1998 alleged to be executed by defendant no. 3 in favour of defendant no. 4 to be declared as inoperative and fraudulent and thus, no right, title and interest passes through it and if the plaintiff is found out of possession, the delivery of possession be given to the plaintiff through the process of the law and on cost of proceeding. Therefore, even if there is no specific relief granted by the learned first appellate court in the judgment and decree dated 12.06.2012 and 27.06.2012, respectively, the learned executing court is within its right to proceed with the execution of the matter and there is no infirmity in the execution proceeding and the same does not become in-executable as contended by Mr. Arora.

08. Therefore, in the light of discussion made here-in-before, I am of the considered opinion that the challenge to the maintainability of execution proceeding is without substance and even though the impugned order is not a well discussed order and leaves much to desire, yet it does not need any interference by this Court under its extraordinary jurisdiction under Article 227 of the Constitution of India and hence, the impugned order dated 03.08.2018 passed by the learned Sub Judge-IV, Gaya in Execution Case No. 05 of 2012 is hereby affirmed.



09. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	26.09.2024
Uploading Date	29.10.2024
Transmission Date	NA

