

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL REVISION No.157 of 2017**

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1. Rakesh Rai @ Rakesh Kumar Rai Son of Sheo Nath Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
2. Vipul Kumar @ Vipul Kumar Rai, Son of Sheo Nath Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
- 3.1. Most. Sachchi Devi Wife of Late Chandrika Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
- 3.2. Rubi Devi D/o Late Chandrika Rai and W/o Brajesh Singh Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
- 3.3. Saurabh Kumar Daughters son of Late Chandrika Rai and S/o Rintu Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
- 4.1. Ram Murat Devi Wife of Kapildeo Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
- 4.2. Shobha Devi Daughter of Kapildeo Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
- 4.3. Nitu Devi Daughter of Kapildeo Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
- 4.4. Rinku Devi Daughter of Kapildeo Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
- 4.5. Ankita Kumari Daughter of Kapildeo Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
- 4.6. Anima Kumari Daughter of Kapildeo Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
5. Reeta Devi, Daughter of Jaleshwar Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
6. Punam Devi, Daughter of Jaleshwar Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
7. Pankaj Kumar @ Pankaj Kumar Thakur, Son of Surendra Thakur Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
8. Sanjay Kumar, Son of Surendra Thakur. Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
9. Vijay Kumar @ Vijay Kumar Rai, Son of Indrashan Rai. Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.

... .. Petitioner/s

Versus

1. Ram Dular Bhagat Son of Ram Deo Bhagat, Resident of Village Sher, P.O. and P.S.- Sidhwaliya, District Gopalganj.
- 2.1. Ali Akhtar Miyan Son of Late Kashim Miyan Resident of Village Sher, P.O.



- and P.S. Sidhwaliya, District- Gopalganj.
- 2.2. Ali Haque Miyan Son of Late Kashim Miyan Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  - 2.3. Jahur Miyan Son of Late Kashim Miyan Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  3. Sabir Mian, Son of Late Amin Mian Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  4. Saheb Hussain Mian, Son of Late Amin Mian. Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  5. Doma Mian, Son of Late Hashim Mian Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  6. Israil Main, Son of Late Hashim Mian. Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  7. Ram Kumar Bhagat, Son of Prem Bhagat, Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  8. Raju Rai, Son of Sheo Nath Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  - 9.1. Gyanti Devi Wife of Late Brajesh Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  - 9.2. Suprit Kumar Rai Son of Late Brajesh Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  - 9.3. Sujit Kumar Rai Son of Late Brajesh Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  - 9.4. Neha Kumari Daughter of Late Brajesh Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  - 9.5. Priyanka Kumari Daughter of Late Brajesh Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  - 9.6. Happy Kumari Daughter of Late Brajesh Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  10. Manju Devi, Daughter of Sheo Nath Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  11. Nilu Devi, Daughter of Sheo Nath Rai Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  12. Sharda Devi, Daughter of Sheo Nath Rai. Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  13. Vikash Kumar, Son of Surendra Thakur. Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  14. Urmila Devi, Daughter of Indrasan Rai. Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.
  15. Most. Kamla Devi Wife of Late Hardeo Bhagat Resident of Village Sher, P.O. and P.S. Sidhwaliya, District- Gopalganj.

... .. Respondent/s



**Appearance :**

For the Petitioner/s : Mr.Nagendra Rai  
Mr. Navin Nikunj  
Mr. Koshalendra Rai  
For the Respondent/s : Mr. Shabbir Ahmad  
Mr.Shambhu Sharan Singh

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR  
PANDEY**

CAV ORDER

24 10-04-2024 I have already heard the parties.

2. The present civil revision application has been preferred against the order dated 10.07.2017, passed by the learned ADJ (FTC-I), Gopalganj in Execution Case No. 01 of 2009, whereby the court below refused to recall its order, whereby the delivery of possession was given to opposite party no.1.

3. The brief facts of the case is that opposite party no.1 filed Probate Case No. 20 of 1967 for grant of probate of a registered Will executed by Late Ghuthi Mahto in favour of opposite party no.1 on 11.04.1967. The petitioners, who are vendees of the legal heirs of Ghuthi Mahto objected the probate case, alleging that it was a forged Will deed and Ghuthi Mahto was unconscious and under treatment on the date of execution of that Will deed. As the probate case was contested, it was converted into Title Suit No. 14 of 1970 and the probate court, after taking evidences of the parties, granted probate to that Will, vide judgment and order dated 10.04.1974. Against that



judgment and order, the petitioners preferred F.A.No. 466 of 1974 which was dismissed in default. The restoration application was also filed and it was also dismissed and the order of the probate court whereby the Will was probated, became final.

4. The learned counsel for the petitioners has submitted that, though the delivery of possession has been given, but this Court has inherent jurisdiction under Section 151 of the Code of Civil Procedure Code, hereinafter to be referred to as 'the Code', to recall that order, as it was out of jurisdiction of the execution court. In a probate proceeding, no execution can be done, as per the provisions of law.

5. The learned counsel for the opposite parties submitted that the entire proceeding of Execution Case No. 01 of 2009 has ended and delivery of possession has been given to the opposite parties. He submitted further that concluded proceeding cannot be re-opened by exercising powers under Section 151 of the Code. He relied upon a decision of Hon'ble the Supreme Court, reported in **(2002) 4)SCC page 188 (State of W.B. and others Vs. Karan Singh Binayak and others)**, wherein the Hon'ble Apex Court held that the powers under Section 151 of the Code cannot be used to reopen the settled



matters.

6. The learned counsel for the petitioners relied upon a decision of this Court reported in *1976 PLJR page 67 (Gammon India Limited and others Vs. Bihar State Electricity Board)* and submitted that the Court has abundant power under Section 151 of the Code to pass any order which is necessary for the ends of justice and for preventing the abuse of the process of the court.

7. From perusal of the impugned order, it appears that the execution case was filed in the year 2009, the judgment debtors appeared in that case on 19.05.2011 and they filed their rejoinder in which they have specifically mentioned that they had no objection in execution of the decree. They did not raise any objection regarding maintainability in that case. The court below issued delivery of possession on 17.10.2015 and it was confirmed on 02.01.2017. The final order was passed in presence of the judgment debtors.

8. In my view, when the delivery of possession has been given to the opposite parties and the execution case has ended, it is not proper to interfere with the order of the court below exercising jurisdiction under Section 151 of the Code. Therefore, the impugned order should not be interfered with.



9. Accordingly, this civil revision application is dismissed.

(Nawneet Kumar Pandey, J)

HR/-  

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