

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.101 of 2023

In
Miscellaneous Appeal No.256 of 2022

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Md. Ehteshamuddin Son of Late Abdul Qyum, Resident of Mohalla - Sadar
Chowk, Ward No. 26, Dehri, P.S. - Dehri, District - Rohtas.

... .. Petitioner/s

Versus

Sardar Gurupej Singh Son of Late Sardar Amarjeet Singh @ Late Sardar
Amar Singh, Resident of Mohalla - Gurudwara Gali, P.O. - Dehri-on-sone,
P.S. Dehri, District - Rohtas.

... .. Defendant-opposite party-Judgment Debtor

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Appearance :

For the Petitioner/s : Mr. Md. Ataul Haque, Advo

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

11 06-03-2024 Heard learned counsel for the petitioner. There is no
representation on behalf of the opposite party.

2.This Civil Revision application has been filed
against the order dated 13/04/2022, passed by the Sub- Judge-X,
Rohtas at Sasaram in Execution Case No. 16 of 2018, whereby
the learned Executing Court has held that the Execution Case is
not fit to be proceeded due to defect of parties and disposed of
the said Execution case.

3. Earlier notice was issued to the opposite party.
Despite Gazette publication, nobody appears on behalf of the
opposite party.



4. The petitioner, who is the plaintiff before the learned lower court, had filed Eviction Suit against defendant-judgment debtor-opposite party on the ground of personal necessity as well as default of payment of rent. The sole defendant appeared and filed his written statement and denied the relationship of landlord and tenant and prayed for dismissal of the suit.

5. The learned Trial Court, after scrutinizing the evidence and materials on record, decreed the suit in favour of the plaintiff. The defendant, being aggrieved with the judgment and decree of the learned Trial Court, preferred appeal being Title Appeal No. 52 of 2018, before the learned District Judge, Rohtas at Sasarm. The same got dismissed. The plaintiff -decree holder filed Execution case bearing Execution Case No. 16 of 2018, against the judgment debtor-opposite party for execution of Eviction decree.

6. Despite the notice, the opposite party did not appear before the Execution Court. The Execution case was declared as *ex parte* on 23/5/2019 as even after gazette notification, the judgment debtor-opposite party failed to appear in the said Execution case. It is submitted that on 22/6/2020 the learned Sub Judge was pleased to direct the office to issue



delivery of possession (DP) in favour of the petitioner after following all formalities in this regard.

7. Since the Court of learned Sub-Judge was vacant, on account of which, this case was transferred to the learned Court of Sub Judge-VIII. Later on, the same was transferred to the Court of learned Sub Judge-X, Rohtas, Sasaram. On 24/09/2021, a petition dated 04-09-2021 was filed by the decree holder (petitioner). On 22/06/2020 and 24/09/2021 the learned Executing Court was pleased to issue delivery of possession against the judgment debtor-opposite party on the application dated 04/9/2021 of the petitioner. In compliance of this order, the learned Executing Court informing to all concerned for providing peaceful possession to the petitioner and a date was fixed regarding effective writ.

8. The learned counsel for the petitioner submits that second time on the date of executing the delivery of possession dated 31/10/2021, the *Nazir* along with other staff of the Civil Court reached on the spot, but the Magistrate did not turn up on the schedule place along with police force, as a result of which, D.P. was not effected. Despite the order of Executing Court dated 24-09-2021 the decree holder-petitioner filed an application for time on 30-03-2022 for filing objection against



the report of the Magistrate in the Executing Court. It is submitted that on the objection of the Magistrate, the learned Executing Court passed an order dated 13-04-2022 after considering the objection raised by the Circle officer.

9. Earlier the report was called for from the Circle officer, Dehri-on-Sone, District Rohtas, and in view of the direction, the circle officer has submitted his report dated 21-03-2022 along with revenue records. The learned Sub Judge (Executing court) considering the report, has held that the disputed property has been entered in the government record (C.S. Khatiyani) as Kaishar-E-Hind. It is matter of fact that the proper government authority has not been made a party either in the original suit or in the instant Execution case. Therefore, the Execution case No. 16 of 2018 is held not to be proceeded with due to defect of parties, and disposed of the said application.

10. Considering all aspects of the matter and it is well settled principle that a Court executing a decree cannot go behind the decree. It must take the decree as it stands, for the decree is binding and conclusive between the parties to the suit.

11. In the case of *Meenakshi Saxena & Anr. Vs. ECGC Ltd. & Anr. (2018) 7 SCC 479*, it was 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 in its face value. It is settled law that 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. At that juncture the executing Court has to be very cautious in supplementing its interpretation and conscious of the fact that it cannot draw a new decree. The executing Court shall strike a fine balance between the two while exercising this jurisdiction in the process of giving effect to the decree”.

12. Considering the aforesaid facts and circumstances and legal provisions, as discussed above, the Executing Court failed to exercise its jurisdiction as by calling for the record and, on the basis of report a new case cannot be formulated by the Executing Court and this act of the Executing Court is beyond jurisdiction for the reason the Executing Court has to abide by the decree.

13. Accordingly, the impugned order dated 13-04-2022, passed by the learned Sub Judge-X, Rohtas at Sasaram, in Execution Case no. 16 of 2018, is set aside. The learned Executing Court is further directed to execute the decree in accordance with law pending in Execution Case No. 16 of



2018, within three months.

14. This Civil Miscellaneous Application is,
accordingly, allowed.

(Khatim Reza, J)

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