

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.304 of 2022

Kinkar Mandal @ Ram Kinkar Mandal Son of Late Dahu Mandal, Resident of House No. 7, Brahma Asthan Shivajinagar, Ward No. 01 at Parsa, P.O.-Parsa, P.S.-Hathouri, District-Samastipur.

... .. Petitioner/s

Versus

1. Alopit Devi Widow of Late Buchai Mandal, resident of Village- Parsa, P.S.-Hathauri, District- Samastpur
2. Ram Nihore Mandal, son of Late Buchai Mandal, resident of Village-Parsa, P.S.-Hathauri, District- Samastpur
3. Indra Rekha Kumar (Minor) daughter of Late Buchai Mandal, under guardianship of her natural guardian Mother Alopit Devi, resident of Village- Parsa, P.S.-Hathauri, District- Samastpur
4. Kunti Devi, Wife of Ram Babu Mandal, resident of Village- Banauli, P.S.-Baheri, District- Darbhanga.
5. Chandrakala Devi, Wife of Shrawan Mandal, resident of Village-Shivram, P.O.-Rajaur Rambhadrapur, P.S.-Hathauri, District- Samastpur
- 7.1. Asha Devi, Wife of late Shyam Mandal, Resident of Village- Parsa, Utterbari Tola, P.S. Hathouri, District- Samastipur.
- 7.2. Poshan Mandal, Son of late Shyam Mandal, Resident of Village- Parsa, Utterbari Tola, P.S. Hathouri, District- Samastipur.
- 7.3. Dilip Mandal, Son of late Shyam Mandal, Resident of Village- Parsa, Utterbari Tola, P.S. Hathouri, District- Samastipur.
8. Moti Mandal, son of Late Dahu Mandal, resident of Village-Parsa Uttarbari Tola, P.S.-Hathouri, District- Samastpur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Durga Nand Jha
For the Respondent/s : Mr. Madhav Kumar

CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL ORDER

12 22-08-2025 1. The present application has been filed against the order dated 07.04.2022 passed in Title Execution Case No. 03/2014 (arising out of Title Suit No. 125/2005) by the learned Munsif, Rosera whereby and whereunder the petitioner has been illegally and arbitrarily directed to deliver the possession over



land measuring an area of 01 dhur six dhurki within 30 days from the decree passed in Title Suit No. 125/2005 without appreciating the facts and law that executing court cannot go beyond the judgment and decree.

2. Heard the parties.

3. From perusal of impugned order, it transpires that a decree has been passed in Title Suit No. 125/2005 with respect to 2 ½ dhur in plot no. 87 (old)/189 (new), appertaining to Khata No. 67 (old)/76 (new), boundary mentioned in brief.

4. The aforesaid suit is decreed in favour of plaintiff *respondent vide judgment dated 31.01.2014 and decree dated 13.02.2014*. The aforesaid suit was decreed on contest but the defendant has not preferred any appeal against the aforesaid judgment and appeal. Now during course of execution process, vide Execution Case No. 03/2014, the defendant-appellant had made objection. The learned court of Munsif, Rosera, Samastipur has mentioned his finding in the order like this:

“Thus, it is clear that the main contention of the petitioner is regarding the mismatch in the measurement reports regarding total area of Khesra 87 in which he has been held to have encroached. In other words, there is no objection regarding the executability of the decree so far as it relates to vacating and



delivering the encroached portion of Khesra 87 nor there is any denial of right of the plaintiff regarding encroached portion, over a portion of which two defendants have already deliver their possession of their parts to the plaintiff, that is to be vacated and given to plaintiff. It is worth mentionable here that in last report also prepared by the Survey Knowing Pleader Commissioner encroachment on one dhoor and six dhurs has been found after the other two defendants vacated their encroached portions. The court has decreed the claim of the plaintiff against which no appeal has been preferred within time prescribed under law thus decree has attained finality and its execution. In my considered opinion cannot be halted merely on the ground that there is any mismatch in the area which would be left after execution of decree because of the reason explained in the preceding para the petition lacks merit and is accordingly stands dismissed. The defendant is hereby ordered to deliver the possession as decreed with 30 days from today.”

5. It is well settled law that Executing Court cannot go beyond the decree and in the present case also, the Executing Court has not went behind the decree by appointing Survey Knowing Pleader Commissioner. Furthermore, if the report of Survey Knowing Pleader Commissioner has come on record and



his evidence is yet to be recorded. So, if any ambiguity is found during course of his evidence appertaining to area mentioned in the Judgment and decree, it will be determined by the Court and further legal step can be taken by the Executing Court to execute the decree in its right perspective.

6. Accordingly, this case is disposed of and remanded to the court for execution of the decree after recording the evidence of Survey Knowing Pleader Commissioner within three months from the date of receipt of copy of this order.

7. Both the parties are directed to cooperate in the proceeding.

(S. B. Pd. Singh, J)

Ranjeet/-

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