

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.145 of 2017

In
CIVIL REVISION No.2010 of 2006

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Shri Chandra Kumar Pandey Son of Late Maldeo Pandey Resident of Mohalla
Church Road, P.S. Daltenganj, District Palamu, Jharkhand.

... .. Petitioner/s

Versus

1. Arun Kumar Son of Late Ram Lakhan Sharma Resident of 5/6, North S.K.
Puri, P.S. S.K. Puri, Patna- 800013.
2. Dinesh Kumar
3. Santosh Kumar Both Sons of Late Banshi Lal
4. Archana Kumari Daughter of Late Banshi Lal
5. Sita Devi Wife of Jagat Narayan Sao
6. Urmila Devi Wife of Hari Narayan Gupta All Residents of Mohalla Daldali
Road, Bakarganj, P.S. Kadamkuan, Patna- 800001.
7. Sakuntala Devi Wife of Jagdish Brahmchari Resident of Village and P.s.
Hilsa, Arya Samaj Mandir Road, Near 'Saran Niwas', District Nalanda.
8. Meena Devi Wife of Mathura Prasad Resident of Mohalla Saguna, P.O. and
P.S. Danapur, Patna- 801503.
9. Barsa Devi Wife of Kishore Kumar Gupta Resident of Mohalla Chaili Tola,
P.S. Alamganj, District- Patna.
10. Shri Arvind Kumar Son of Late Ram Lakhan Sharma Resident of 5/6, North
S.K. Puri, P.S. S.K. Puri, Patna- 800001.

... .. Opposite Party/s

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with
CIVIL REVIEW No. 166 of 2017
In
CIVIL REVISION No.2010 of 2006

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Arun Kumar Son of Late Ram Lakhan Sharma, Resident of 5/6, North S.K.
Puri, P.S. S.K. Puri, Patna- 800013.

... .. Petitioner/s

Versus

1. Dinesh Kumar
2. Santosh Kumar, sons of Late Banshi Lal.
3. Archana Kumari, daughter of late Banshi Lal.
4. Sita Devi, Wife of Jagat Narayan Sao.
5. Urmila Devi, Wife of Hari Narayan Gupta, All residents of Mohalla Daldali
Road, Bakarganj, P.S. Kadamkuan, Patna- 800001.
6. Sakuntala Devi, Wife of Jagdish Brahmchari, resident of Village and P.S.
Hilsa, Arya Samaj Mandir Road, Near 'Saran Niwas', District- Nalanda.
7. Meena Devi, Wife of Mathura Prasad, resident of Mohalla Saguna P.O. and



P.S. Danapur, Patna- 801503.

8. Barsa Devi, Wife of Kishore Kumar Gupta, resident of Mohalla Chaili Tola, P.S. Alamganj, District- Patna.
9. Shri Arvind Kumar, son of Late Ram Lakhan Sharma, resident of 5/6, North S.K. Puri, P.S. S.K. Puri, Patna 800001.
10. Shri Chandra Kumar Pandey, Son of Late Maldeo Pandey resident of Mohalla Church Road, P.S. Daltenganj, District- Palamu, Jharkhand.

... .. Opposite Party/s

Appearance :

(In CIVIL REVIEW No. 145 of 2017)

For the Petitioner/s : Mr.Arvind Kumar

For the Opposite Party/s : Mr.Uday Bhan Singh

(In CIVIL REVIEW No. 166 of 2017)

For the Petitioner/s : Mr.Uday Bhan Singh

For the Opposite Party/s : Mr.Arvind Kumar

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

CAV ORDER

13 17-03-2025 I have already heard the learned counsels for the parties.

2. Both the revision applications have been preferred for review of the order dated 28.03.2017, passed by the then coordinate Bench of this Court in Civil Revision Case No. 2010 of 2006, dismissing the revision filed by the petitioners.

3. The petitioner Arun Kumar and his brother were defendants in Title Suit No. 260 of 1986. The plaintiffs had filed that suit for declaration of their title over the land described in Schedule-II of the plaint, comprising plot nos. 1479 and 1480, area 5 kathas and 6 dhurs. The suit was decreed against the petitioner, his brother (defendant no. 7) and other defendants. The decree holder(s) filed Execution Case No. 01 of 2005. The



delivery of possession was given to the decree holder(s).

4. Thereafter, an application was filed by the petitioner(s) that the delivery of possession has been given to the excess land than that of the suit property. It has been mentioned in that application that delivery of possession was given also to Schedule-III property, whereas no relief was claimed for recovery of possession in respect of Schedule-III property and the relief of recovery of possession was only claimed in Schedule-IV property.

5. Vide order under review, the coordinate Bench of this Court found that the suit was decreed in respect of the entire area of Schedule-II property and Schedule-II property consists of Schedules-III and IV properties, as such, this submission is not acceptable that the plaintiffs are not entitled for recovery of possession over Schedule-III property. Paragraph nos. 22, 23 and 24 of the order under review is being extracted hereinbelow:-

“22. So far the submission that the decree has been executed over excess area of land is concerned, it may be mentioned that the description of Schedule II stated above is very clear. The disputed land is bounded by roads in three sides and in one side bounded by boundary of plot No.1481 and 1482 whereon house of Suresh Aggrawal is there. In the supplementary affidavit, the petitioner also admitted this fact. If it is so, then



where from the excess land came. It is not the case that any flanks of the roads in three sides has been delivered in possession to the plaintiff nor it is the case that land of Suresh Aggrawal has been delivered to the plaintiff and moreover Suresh Aggrawal is not coming into the Court. So far Schedule II property is concerned, the boundary is specific and is admitted. Now, the petitioner is making a case that Schedule II land is his land and that his house was on the land. This cannot be allowed to be raised in objection under Section 47 CPC. This cannot be investigated in the garb of objection, particularly when the decree has been passed in favour of the plaintiff and his title has been declared over Schedule II land. Now, in the garb of objection under Section 47 CPC, the Executing Court cannot be allowed to find out if petitioner was in possession of schedule IV land or Schedule III land or outside of Schedule III and Schedule IV land or any where else.

23. So far granting opportunity to the petitioner is concerned, from perusal of the impugned order, it appears that the Court below has dealt with the application, i.e., objection of the petitioner and the rejoinder filed by the decree holder and then has stated that heard the parties and then perused the record. In such circumstances, this Court cannot presume that the petitioner was not heard at all.

24. Emphasis has been given by the petitioner on order dated 09.09.2006 Annexure '12' and it was submitted that 16.09.2006 was the date fixed for order on intervention application. From perusal of Annexure '12', I find that the learned counsel for the petitioner is correct but it will not be out of place to mention here that there is no bar that on the date fixed for passing order on an application, the Court cannot hear other application and pass order. Therefore, it can very



safely be said that although the date was fixed for passing order on 16.09.2006 on the intervention application, the executing Court heard the parties on objection also and passed the impugned order. Moreover, this Court has the jurisdiction under Article 227 to pass the order which would have been passed by the lower Court after hearing the parties. What more argument could have been advanced by the petitioner before the executing Court or what more will be argued before the executing Court if the matter will be remanded to the executing Court for passing a fresh order after hearing the petitioner. After all, from the objection and arguments advanced, it appears that the facts are evident from the record and, therefore, only law has to be applied. In my opinion, no case for remanding the matter on the ground of natural justice is made out. On the other hand, on this technical ground if the matter is remanded then again complicacy will arise and it will delay the matter and an opportunity will be available to the petitioner to begin second inning in this matter. It will only delay the matter and will also prejudice the other side and will amount to granting permission to the petitioner to abuse the process of Court by killing the public time on this frivolous ground.”

6. From bare perusal of the aforementioned three paragraphs of the order under review, shows that the delivery of possession was given to the suit land, which is the entire area of plot nos. 1481 and 1482. The learned coordinate Bench has held that the suit land is bounded by roads from three sides, east south and west and in northern side, the boundary of plot No.



1479 and 1480 is situated, and thereafter the house of one Suresh Aggrawal was situated, as such the land in dispute was explicitly identifiable, on which the delivery of possession was given to the plaintiff(s).

7. During course of arguments, it was brought to the notice of this Court that the Title Appeal No. 77 of 2005 filed by the petitioner(s) against the judgment and decree of Title Suit No. 260 of 1986 has also been dismissed during pendency of this review petition.

8. The second submission of the learned counsel for the petitioner(s) is that the coordinate Bench committed illegality in deciding Civil Revision No. 2010 of 2006, which was not maintainable. It has been argued that the civil revision application should have been decided only after its conversion into a civil miscellaneous petition under Article 227 of Constitution of India.

9. So far as this submission of the learned counsel for the petitioner is concerned, that has been dealt in paragraph nos. 16 and 17 of the order under review.

Paragraph nos. 16 and 17 are being extracted hereinbelow.

“16. In view of the above position, I do not find any mandatory procedural law that the



Civil Revision application must be converted to an application under Article 227 of the Constitution of India, if Civil Revision is not maintainable then only the petitioner will be heard. The High Court has the power to exercise jurisdiction under Article 227 suo motu also.

17. I, therefore, instead of directing the petitioner to convert this Civil Revision application to Civil Misc. application under Article 227 of the Constitution of India according to Patna High Court Rules proceeded to decide on merit treating this Civil Revision application as an application under Article 227 of the Constitution of India.”

10. The High Court has the power to exercise jurisdiction under Article 227 suo moto also and there is no any procedural law, which prohibits this Court from hearing an application under Article 227 of the Constitution of India.

11. It is a settled principle that merely because wrong Section has been mentioned, the party should not be deprived from getting the relief. As such, the submission of the learned counsel for the petitioner(s) is unacceptable.

12. The learned counsel for the petitioner has submitted further that before passing the order dated 16-09-2006 in Execution Case No. 01 of 2005, the opportunity of being



heard was not given to the petitioner(s), but in paragraph no. 23 of the order under review, it has been mentioned that after receiving the rejoinder on behalf of the petitioner and after hearing the parties, the order dated 16-09-2006 was passed.

Paragraph no. 23 of the order under review is being extracted herein below:-

“So far granting opportunity to the petitioner is concerned, from perusal of the impugned order, it appears that the Court below has dealt with the application. i.e. objection of the petitioner and the rejoinder filed by the decree holder and then has stated that heard the parties and then perused the record. In such circumstances, this Court cannot presume that the petitioner was not heard at all.”

13. The learned counsel for the petitioners has failed to indicate any error on the face of the record, which requires interference in the order under review.

14. I do not find any merit in the review applications, which are accordingly dismissed.

(Nawneet Kumar Pandey, J)

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