

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.924 of 2019

Ajay Prasad @ Ajay Chaudhari Son of Late Shambhu Narayan Chaudhary
Resident of Village- Koat Bazar Sitamarhi Town Ward No. 8, P.O. and P.S.
and District- Sitamarhi.

... .. Petitioner/s

Versus

Smt. Bigani Devi Wife of Sri Fulchand Prasad Resident of Mohalla- Maharani
Asthan, Koat Bazar Sitamarhi Town Ward No. 8, P.O. and P.S. and District-
Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Mishra, Advocate Mr. Basant Kumar, Advocate
For the Respondent/s	:	None

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

7 11-07-2025 Heard learned counsel for the petitioner. Despite appearing through *vakalatnama*, there is no representation on behalf of the respondent.

2. The petitioner is aggrieved by the order dated 07.02.2019 passed by the learned Sub Judge-I, Sitamarhi in Execution Case No. 49 of 2015 whereby and whereunder the learned Sub Judge-I, Sitamarhi rejected the petition 24.08.2018 filed by the plaintiff/petitioner for recalling the order dated 20.04.2018. The learned subordinate court directed the judgment debtor to deposit the amount within 15 days as per judgment and order passed in Title Appeal No. 17 of 2012.

3. Learned counsel for the petitioner submits that the plaintiff/petitioner filed Title Suit No. 58 of 2006 on the basis of



a *mahadnama* seeking relief of specific performance of contract with respect to land measuring 2 decimal under Khata No. 221, R.S. Plot No. 155 corresponding to C.S. Plot No. 1453 and 1464 of Mouza Kot Bazar, P.S. and District Sitamarhi and in alternative the plaintiff sought money decree to the tune of Rs. 78,000/- along with interest. The defendant appeared and contested the suit and ultimately the suit was partly dismissed by judgment dated 16.02.2012 and decree dated 01.03.2012 passed by learned Sub Judge-I, Sitamarhi. Plaintiff/petitioner preferred Title Appeal No. 17 of 2012 and the said appeal was allowed by the learned Additional District Judge-I, Sitamarhi by judgment dated 24.03.2015. Learned 1st appellate court directed the defendant/respondent that either to receive the remaining amount of Rs. 22,000/- from the plaintiff and execute a sale deed in favour of the plaintiff with respect to the suit property described in Schedule-1 of the plaint and in alternative, the defendant was directed to refund the earnest money of Rs. 78,000/- to the plaintiff with interest @ of 6% from the date of filing of the suit within two months of the judgment failing which the plaintiff was held entitled to get the land executed after depositing Rs. 22,000/- in the court through the process of the court. The plaintiff/petitioner filed Execution Case No. 49 of



2015 before the court of learned Sub Judge-I, Sitamarhi for execution of the judgment and decree passed in Title Appeal No. 17 of 2012. Despite service of notice in paper publication, defendant/respondent did not appear in the execution and the case was proceeded *ex-parte* on 09.06.2017. Thereafter, pursuant to the directions of the learned trial court, a draft sale deed was prepared and submitted before the learned court below as the judgment debtor had not presented herself in the execution case. On 20.04.2018, the plaintiff/decreed holder/petitioner requested for executing the formalities as per the draft sale deed and the learned executing court directed the decree holder/plaintiff/petitioner to deposit a non-judicial stamp as per the directions of the Registrar and fixed the case on 11.05.2018. However, on the same day for the first time, the judgment debtor appeared and filed his application requesting for time. Learned counsel further submits that after passing of the aforesaid order in favour of the decree holder, the learned trial court without recalling the previous order and without according the plaintiff/decreed holder any opportunity of hearing, later on the same day, i.e., on 20.04.2018, on an application filed by the judgment debtor that she was ready to deposit the amount as per the appellate order, granted 15 days time to the



defendant/judgment debtor/respondent to deposit the same. Learned counsel further submits that this order was passed behind the back of the plaintiff/petitioner and no copy was served upon him. The petitioner was not even aware of any order passed by the Subordinate court and was not even aware that the judgment debtor/defendant has prayed for depositing the amount before the court below. Ultimately, the plaintiff/decree holder came to know about the order and depositing of the amount by the judgment debtor and filed an application on 24.08.2018 to recall the order dated 20.04.2018 to the extent wherein the judgment debtor was asked to deposit the amount as per the appellate court order and all subsequent orders passed whereby the judgment debtor was depositing the amount in installments. Learned counsel further submits that it has been submitted before the learned Subordinate court that the time period granted by the appellate court had expired and there was no occasion for the learned Subordinate Court to by-pass the same. Moreover, on the same day, the learned subordinate court had allowed the plaintiff/decree holder to deposit a non-judicial stamp for execution of sale deed and unless that order was recalled, subsequent order was bad in law. A rejoinder was filed to the application and the learned trial court after hearing the



parties dismissed the application.

4. Learned counsel further submits that though the learned trial court observed that submission made by the plaintiff/decreed holder were correct but the same court cannot review or recall its own order and the order has not been suffering from any clerical or typographical error. Learned counsel further submits that the observation of the learned Subordinate Court is completely erroneous that it cannot re-call the order though holding that submission of the decreed holder was correct. Learned counsel further submits that the impugned order suffers from further infirmity as the said order ought to have been recalled as it overlooked two aspects. Firstly the case was fixed for *ex-parte* against judgment debtor and the *ex-parte* proceeding was not recalled and secondly the subordinate court had already ordered the plaintiff/decreed holder to deposit non-judicial stamp paper. Further the learned counsel submits that apart from power of review, the learned subordinate court has got inherent powers under Section 151 of the Code of Civil Procedure to pass orders to prevent an abuse of the process of the court and also for the ends of justice.

5. Perused the record.

6. From perusal of record and submission made on



behalf of the petitioner, it is apparent that the learned trial court without recalling its earlier order 20.04.2018, passed an order directing the judgment debtor to deposit money which is in teeth of the orders of the appellate court. Further this order has been passed behind the back of the decree holder and such order could not be sustained. Moreover, holding that the court has got no power to make amends by recalling or reviewing its earlier order is against the established principle of law. Therefore, the impugned order dated 07.02.2019 passed by learned Sub Judge-I, Sitamarhi in Execution Case No. 49 of 2015 is not sustainable and the same is set aside and the petition dated 24.08.2018 filed by the petitioner is allowed.

7. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

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