

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1180 of 2017

- 1.1. Chinta Devi W/o Kapildeo Prasad, D/o Late Rupnarayan Prasad R/o Uttari Koiri Tola, Hilsa, P.O.- Hilsa, P.S.- Hilsa, District- Nalanda.
2. Santosh Kumar, S/o Rupnarayan Prasad Resident of Village- Kela Bigha, P.O.-Telharda, P.S.- Ekangar Sarai, District- Nalanda.

... .. petitioners

Versus

1. Sita Ram Prasad S/o Late Bandhu Mahto Residence of Village- Kela Bigha, P.O.-Telharda, P.S.- Ekangar Sarai, District-Nalanda.
2. Dayananad Prasad, S/o Late Bhandhu Mahto Residence of Village- Kela Bigha, P.O.-Telharda, P.S.- Ekangar Sarai, District- Nalanda.
3. Shailendra Kumar, Minor Son fo Sita Ram Prasad Residence of Village- Kela Bigha, P.O.-Telharda, P.S.- Ekangar Sarai, District- Nalanda.
4. Ranjeet Kumar, Minor Son of Sita Ram Prasad Residence of Village- Kela Bigha, P.O.-Telharda, P.S.- Ekangar Sarai, District- Nalanda.
5. Smt. Umapati Devi, W/o Dr. Doman Prasad, Residence of Village- Amba, P.O. and P.S.- Rahui, District- Nalanda.
6. Smt. Sugiya Devi, W/o Sri Kamashwar Prasad, Residence of Village- Mahwada, P.O.- Sarangpur, P.S.- Jehanabad, District- Jehanabad.

... .. Respondents

Appearance :

For the petitioner/s	:	Mr. Vishal Saurabh, Advocate
		Mr. Sujit Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Anil Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 07-03-2025

The instant civil miscellaneous petition has been filed for quashing the order dated 20th of February, 2017 passed by learned Sub Judge-I, Hilsa, Nalanda in Execution Case No. 01 of 2014, whereby and whereunder the learned executing court set aside the delivery of possession and also the report submitted by the *Nazir* and directed the decree holder, i.e., the petitioners



to take necessary steps for taking further delivery of possession in the land in question.

02. Briefly stated, the facts of the case as it appears from the record, are that the petitioners filed a Title Partition Suit No. 38 of 2001 against defendants/respondents claiming their half share in the scheduled property of the plaint. The suit was contested and the learned trial court after hearing the matter decreed the suit by passing the judgment dated 27.01.2006 and issuing the decree dated 08.01.2007. On 25.07.2007, a petition was filed for appointment of Pleader Commissioner to submit his report and one Sri Vasudev Narayan Verma, learned Advocate, was appointed as Pleader Commissioner. The learned Pleader Commissioner submitted his report to the court on 02.07.2008. It further transpires from the petition of the petitioners that after lapse of three years, respondents filed an objection on 17.10.2011 against the report of the Pleader Commissioner. The learned trial court, after hearing the parties, accepted the report of the Pleader Commissioner and rejected the objection filed by the respondents. No appeal or revision was preferred by the respondents against the said rejection. On the basis of Pleader Commissioner's report, final decree was prepared on 03.04.2012 with regard to shares of the parties.



However, the petitioners claim that the respondents continued their cantankerous approach and, as such, the Execution Case No. 01 of 2014 was filed for *Takthabandi* on 23.01.2014. In the said case, *Nazir* was appointed by the court to effect delivery of possession as per final decree dated 03.04.2012 and on 20.09.2015, the *Nazir* filed his report under Order 21 Rule 35 of the Code, submitting that the delivery of possession was given to both the parties as per the procedure laid down under the Code. It further transpires that after lapse of 11 months, respondents filed a petition of 09.08.2016, making allegation against the report of Pleader Commissioner as well as report of *Nazir*, as the report contained a number of mistakes and sought fresh delivery of possession by the court. The petitioners filed a rejoinder to the said petition. The learned trial court vide order dated 20.02.2017 allowed the petition dated 09.08.2016 filed by the respondents and rejected the report of the *Nazir* regarding delivery of possession. The said order is under challenge before this Court.

03. Learned counsel for the petitioners submitted that the petitioners are aggrieved by the impugned order for the reason that the said order is passed against the law as well as facts. The learned executing court exceeded its jurisdiction to



entertain the application of the respondents as after passing of the preliminary as well as final decree, such application could not have been entertained by the learned executing court. The learned executing court did not consider the fact that the *Nazir* has already submitted its report about delivery of possession and the same could not be undone, on asking of the respondents who are judgment debtors. The learned executing court did not consider the well settled principles of law and without assigning any cogent reason, allowed the application of the judgment debtor. Learned executing court also failed to take into consideration that earlier an objection petition dated 16.07.2016 has been filed on behalf of the respondents and the said objection petition was dismissed by the learned executing court and the respondents, instead of challenging the same, filed another objection petition on 09.08.2016 on the same ground, which is not maintainable. Learned counsel further submitted that a careful reading of the material and the sketch map of the final decree would show that portion of lots which were allotted to the share of plaintiffs/petitioners are marked in red whereas the lots which were allotted to the share of defendants/respondents have no colour. The respondents were having full knowledge about date of executing of decree at they



had been appearing in execution case regularly and the respondents refused to accept the notice and it was treated as valid service. A false claim has been made on behalf of the respondents that *Nazir* had made many cutting in the chart of respective shares of plaintiffs/decreed holders and defendants/judgment debtors. Earlier, the learned executing court considered the objection and found no illegality in the *Nazir's* report and vide order dated 16.07.2016 rightly rejected the objection of the defendants/respondents.

In support of his contention, learned counsel for the petitioners referred to the decision in the case of *Dipali Biswas vs. Nirmalendu Mukherjee* reported in *AIR 2021 SC 4756* wherein the Hon'ble Supreme Court held that a judgment-debtor cannot be allowed to raise objections as to the method of execution in installments. Thus, the learned counsel submitted that the impugned order is not sustainable and the same be set aside.

04. On the other hand, learned counsel for the respondents while opposing the submission made by the learned counsel for the petitioners submitted that the impugned order is proper and correct and no interference is required from this Court. The learned trial court has rightly allowed the objections



filed by the respondents after considering the facts and circumstances and therefore, the impugned order does not suffer from any irregularity or error. There could be no challenge to the authority of the learned executing court as it has got ample power to adjudicate all the disputes and to consider any objection raised by any of the parties during the course of execution of decree. Learned counsel further submitted that the learned trial court considered the facts of the case and passed the impugned order as the report of *Nazir* was against the allotment of share in final decree and therefore, it was an illegal report. The so-called delivery of possession took place in absence of the respondents and such report is not admissible under the law. The *Nazir* came in collusion with the decree holder and tried to modify the possession of the plots which were allotted in the share of the respondents. The *Nazir* submitted a completely false report and there was no signature of any independent witness to show that the delivery of possession was effected in their presence. Moreover, as per the report, the parties are already in possession of their allotted shares and if the said report is correct then how can *Nazir* effected the delivery of possession to decree holder? No notice was ever issued to the judgment debtor and the judgment debtor



have no knowledge about any delivery of possession. When the judgment debtor came to know about the false report of the *Nazir*, they made objection that the *Nazir* made cutting in the chart of the land and the report did not disclose the fact which portion was given to whom. Learned counsel further submitted that though the said objection was rejected by the learned executing court vide its order dated 16.07.2016, the reason for rejection was the objections not being supported with affidavit and the allegations were not presenting the true facts. However, the learned executing court gave liberty to the judgment debtors to file another objection petition with correct and clear facts duly supported with an affidavit. So, the second objection was not barred. The second objection was filed on 09.08.2016 and it is incorrect to say that the objection was beyond the period of limitation. Learned counsel reiterated that the *Nazir* acted beyond his jurisdiction and such report is not admissible under the law. The *Nazir* was supposed to give possession to the parties in terms of the final decree and could not deliver the possession beyond the decree. Learned counsel further submitted that though it is well settled that executing court has only to execute the decree but objection raised by any of the parties during the course of execution of the decree, such



objections are to be considered and disposed of by the learned executing court and on this ground, the order of the learned executing court cannot be faulted. Learned counsel further submitted that the action of the *Nazir* in cutting certain entries in the chart, which is the part and parcel of the final decree, is a very serious matter. Learned counsel further submitted that this Court is not supposed to look into the appreciation of facts by the learned trial court as under Article 227 of the Constitution of India, as this Court does not sit in appeal and has got very limited power to see that whether there is any error of jurisdiction while passing the impugned order and on this touchstone, the present petition is not maintainable. Hence, the impugned order be upheld.

05. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

06. Normally, this Court does not go into re-appreciation of facts once the same have been considered by the learned trial court and a finding has been recorded. On this premise, the Court could not go on to record a different finding, if the facts are properly appreciated and there is no perverse finding. Coming to the facts of the case, the respondents raised an objection to the report of the *Nazir* effecting delivery of



possession. The *Nazir* has been entrusted with the task of delivery of possession on the basis of the report of learned Pleader Commissioner, allotting the share with *Raibandi* and *Dazbandi*, which forms part of the final decree. The learned executing court set aside the report of the *Nazir* on the ground that from the map, plots could not be identified and the delivery of possession could not be effected on such description. Apart from it, the learned executing court has not given any reason, although it has observed that the averments made by the judgment debtors was correct. Now in their averment, the judgment debtors have stated that *Khesra* No. 135 of *Khata* No. 130 having area 02 decimal was allotted in the share of the judgment debtors/respondents, but the possession of the same was made in favour of the decree-holders/petitioners. Similarly, it has been submitted that there has been manipulation in Plot No. 138 of *Khata* No. 130 by changing the side of allotment from north to south and south to north. Similar allegation had been made about *Khesra* No. 88 of *Khata* No. 129 area 06 and $\frac{1}{2}$ decimal that western portion of which was initially allotted to the judgment debtors/respondents but it was subsequently allotted in favour of the decree holders/petitioners and area of decree holders from eastern side was given to the respondents



during delivery of possession. Similar allegation is with regard to *Khesra* No. 33 of *Khata* No. 129 area 11 decimal, *Khesra* No. 257 of *Khata* No. 44 area 57 and $\frac{1}{2}$ decimal and Plot No. 7 of *Khata* No. 129 area 17 and $\frac{1}{2}$ decimal. However, on going through the final decree and report of the learned Pleader Commissioner, it is apparent that the change in the plot numbers were made by the learned Pleader Commissioner with his initial and it could not be said that the *Nazir* changed the plot numbers while effecting delivery of possession. The map attached with the report of the Pleader Commissioner makes it amply clear that the decree holders were given the portion of suit property mentioning the plot numbers which have been covered in red colour whereas the judgment debtors' plots were colourless. From the map, it is evident that the northern portion of Plot No. 138 was given to the decree holders. Similarly, Plot No. 135 which was claimed by the judgment debtors having area 02 decimal has been allotted in share of the decree holders completely. Similarly, in Plot No. 88, 7, 33 and 257, allotment was made not according to claim of the judgment debtors, but the direction of area of these plots were changed by the learned Pleader Commissioner and he also reflected it in the map by allotting the shaded portion of area in red to decree holders and



blank area in favour of the judgment debtors. Admittedly, the report of the Pleader Commissioner was not challenged and it has attained finality.

07. So, the task was cut for the *Nazir* and he has to effect the delivery of possession on the basis of final decree containing the report of the learned Pleader Commissioner and there appears no ambiguity of vagueness in allotment. Thus, the *Nazir* acted upon the report of the learned Pleader Commissioner containing of *Raibandi* and *Dazbandi* of the suit property and effected the delivery of possession.

08. In the light of aforesaid discussion, I am unable to agree with the finding of the learned executing court about there being no clarity in the map regarding plots. Challenge to the report of the *Nazir* has also been made on the ground that the *Nazir* held that the parties were found in possession of their respective shares and thus, delivery of possession is effected. But, I fail to understand that if the same is the situation why the respondents are aggrieved? If respondents are unaffected, there was no reason for them to challenge the report regarding delivery of possession submitted by *Nazir*. So, such contention on behalf of respondents is liable to be rejected. Further, the same sort of objections to the *Nazir* report were rejected by the learned executing court vide a detailed order dated 16.07.2016.



09. Having regard to the facts and circumstances in totality and considering the submission of the parties, I am of the considered opinion that the impugned order dated 20.02.2017 could not be sustained as it has been passed under an erroneous consideration of the jurisdiction and therefore, the order date 20th of February, 2017 passed by the learned Sub Judge-I, Hilsa, Nalanda in Execution Case No. 01 of 2014 is set aside.

10. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	21-01-2025
Uploading Date	08-03-2025
Transmission Date	NA

