IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 66 of 2024

Tara Devi, aged about 50 years, wife of Vijay Upadhyay, daughter of late Sukhdeo Pandey, resident of village Nagwan, P.O. Chatra, P.S. Sadar, District-Chatra

….. Petitioner

Versus

1. Draupadi Devi, aged about 82' years wife of late Gopal Prasad.

(2). Arjun Prasad aged about 62 years son of late Gopal Prasad.

(3) Ashok kumar aged 56 years son of late Gopal Prasad.

(4) Anil kumar aged 24 years son of late Gopal Prasad.

(5) Smt. Savitri devi aged 60 years daughter of late Gopal Prasad.

(6) Shila devi aged 22 years daughter of late Gopal Prasad.

(7) Sidhu devi aged 50 years daughter of late Gopal Prasad.

(8) Smt. Binda devi aged 48 years daughter of late Gopal Prasad. All resident at marwari mohalla, P.O. and P.S sadar Dist chatra

(9) Satya Narayan pandey aged 50 years son of late Sukhdev Pandey

(10) Ashok Pandey @sanjay pandey aged 49 years son of late Sukhdev Pandey.

(11) Poonam devi aged 47 years wife of Saroj Pandey

(12) Kanchan kumari aged 15 years (minor)

(13) Archana kumari aged 13 years (minor)

(14) Kali Kumar aged 11 years (minor)

(15) Muniya rani aged 9 years (minor) all minor daughter of late Saroj Pandey represented through the natural guardian their mother Poonam devi.

(16) Gyatri Devi aged 47 years daughter of late Sukhdev Pandey

(17) Awadh Bihari Tiwari aged 54 years resident at Sharma bazaar P.S Barachatti dist. Gaya Bihar at present resident at Nagwan ward

no. 09 P.O Chatra P.S sadar dist. Chatra

(18) Bibi Rehana Khatoon aged 62 years wife of Md. Reyasat miyan

(19) Mahendra Prsada singh aged 56 years son of babu Lalo Singh both resident at chatra P.O + P.S chatra dist. Chatra

(20) Binod Sahu aged 48 years son of shree bandhan sahu resident of vill. Lutidih P.O and P.S Simariya Dist, chatra

(21) Pradeep kuamr singh aged 47 years son of Gopal Singh resident of vill. Phulwariya P.S Tandwa Dist Chatra

..... Opposite Parties

CORAM: HON'BLE MR JUSTICE SANJAY KUMAR DWIVEDI, J.

For the Petitioner : Mr. H.K. Shikarwar, Advocate

For the O.P. Nos. 1 to 4 : Mr. Amar Kr. Sinha, Advocate
For the O.P. Nos. 20 and 21: M/s Rakhi Kumari and
Akanksha Basundhra Raje, Advocates

10/09.01.2025 By order dated 03.05.2024 notices were directed to be issued upon the opposite parties.

2. O.P. Nos. 1 to 4 and O.P. Nos. 20 and 21 have appeared through their counsels by filing vakalatnama. Notice upon O.P. Nos. 5 to 14 have been validly served. O.P. No.15 has left for his heavenly abode. Notice upon O.P. Nos. 16 to 19 have not been effected as yet and it was pointed out by the learned counsel for the O.P. Nos. 1 to 4 that so far other opposite parties are concerned, they are subsequent purchasers and O.P. Nos. 1 to 4 are contesting parties and decree was in their favour and objection has been filed by Tara Devi-petitioner. As such this petition is being heard.

3. Heard Mr. H. K. Shikarwar, learned counsel for the petitioner, Mr. Amar Kr. Sinha, learned counsel for the O.P Nos. 1 to 4 and Ms. Rakhi Kumari and Akanksha Basundhra Raje learned counsel for the O.P. Nos. 20 and 21.

4. This petition has been filed under Article 227 of the

Constitution of India for quashing of the order dated 25.02.2022 passed in miscellaneous civil appeal no. 01 of 2022 by learned District Judge, Chatra and also for quashing of the order dated 21.12.2021 passed by learned Sub-Judge-II, Chatra in miscellaneous case no. 06 of 2020 arising out of execution case no. 02 of 2010.

5. Mr. H. K. Shikarwar, learned counsel for the petitioner submits that one Draupadi Devi and others filed Title Suit No. 08 of 1994 before the Court of learned Sub-Judge-II, Chatra against the father of the petitioner and others with a prayer for declaration of right, title and interest and for recovery of possession. He further submits that the said title suit was dismissed and against that the plaintiffs have preferred title appeal being Title Appeal No. 44 of 2004 which was allowed by the order dated 22.02.2007 and the decree was passed in favour of the O.P. Nos. 1 to 4. He further submits that thereafter the plaintiff/appellant has filed Execution Case No. 02 of 2010 wherein the petitioner was not made party in the original suit as well as in the appeal. He then submits that even in execution case the petitioner was not made party so the petitioner filed Miscellaneous Case No. 06 of 2020 for stay of Execution Case No. 02 of 2010 however, the learned court by order dated 21.12.2021 has rejected the same. He further submits that by order dated 25.02.2022 the Miscellaneous Civil Appeal No. 01 of 2022 was dismissed. He then submits that the petitioner is in possession of the suit property. He further submits that both the orders dated 21.12.2021 and 25.02.2022 are bad in law. He submits that the learned courts have failed to appreciate that the petitioner happened to be the daughter of late Sukhdeo Pandey and she was not made party in both the proceedings and also in execution case inspite of that impugned orders have been passed which are against the mandate of law for that this petition has been filed. On these grounds, he submits that impugned orders may kindly be quashed.

6. On the other hand Mr. Amar Kr. Sinha, learned counsel for the O.P. Nos. 1 to 4 submits that the petitioner happened to be

the daughter of defendant no.1 namely, Sukhdeo Pandey and her father contested the suit as well as appeal and thereafter execution case has been filed. He further submits that same objection was earlier made in Civil Misc. Case No. 28 of 2018, Misc. Civil Application No. 106 of 2018 and Misc. Civil Application No. 107 of 2018 which were rejected. He further submits that the said appellate judgment was travelled to the High Court in S.A. No. 86 of 2007 filed by defendant no.1-Sukhdeo Pandey who happened to be the father of the petitioner and the said Second Appeal was dismissed by judgment dated 08.09.2022. In this background he submits that petition under section 47 C.P.C. was also filed by the petitioner in the execution case which was rejected by impugned order dated 21.12.2021 against that appeal was filed which was also dismissed by order dated 25.02.2022. He further submits that there is no illegality in both the orders passed by the learned court and only to linger the possession of decree holder this petition has been filed. He further submits that for declaration of right, title and interest the petitioner has filed Original Title Suit No. 130 of 2023 before learned Munsif, Chatra and in that case decree holder have been made party and the matter is still sub judice. On these grounds, he submits that there is no merit in the petition and this petition may kindly be dismissed in view of the ratio of the Hon'ble Supreme Court laid down in the case of ***" Rahul S. Shah Vs. Jinendra Kumar Gandhi and others" reported in 2021 4 Supreme 1***.

7. Learned counsel for the O.P. Nos. 20 and 21 submits that the O.P. Nos. 20 and 21 are subsequent purchaser and there is no illegality in both the orders.

8. In view of above submissions of the learned counsel for the parties the Court has gone through the materials on record as well as impugned orders passed by the learned Court. In course of argument, the argument advanced by Mr. Amar Kr. Sinha with regard to earlier rejection petitions not disputed by the counsel of the petitioner as it is not in dispute. Learned counsel for the petitioner has only disputed that earlier the said rejection has been

made due to mismatch. Thus, it is an admitted position that earlier Civil Misc. Case No. 28 of 2018, Misc. Civil Application No. 106 of 2018 and Misc. Civil Application No. 107 of 2018 have been filed which were rejected against that no appeal was preferred. It is further an admitted position that the father of the petitioner who was contesting the suit as defendant no.1. Thus argument of the learned counsel for the petitioner is erroneous with regard to the fact that she was not made party either in the suit or in appeal as well as in execution case. Further suit was dismissed against that Title Appeal No. 44 of 2004 which was allowed by the order dated 22.02.2007 in favour of the appellant/plaintiff against that defendant no.1 who is father of the petitioner has filed Second Appeal No. 86 of 2007 before the High Court and the said Second Appeal was dismissed by judgment dated 08.09.2022 by the High Court. The petitioner has already filed objection under section 47 of the C.P.C. in execution case and by the impugned order 21.12.2021 the said objection petition was dismissed and the learned court has been pleased to hold that she is not having valid title and malafidely the petition has been filed with intention just to put hindrance against that appeal was preferred being Miscellaneous Civil Appeal No. 01 of 2022 which was dismissed vide order dated 25.02.2022 and after elaborate discussion the appellate court has held that this petitioner would not have better title than her father, who had no valid right, title and possession over the suit land as he has not produced the family tree authorized by government officials and after 1922 the Khewatdar of land, Rupchand Pandey said to have effected DP in execution case no. 102 of 1922-23 by the process of law and thereby disposed his bakast land of kahta no. 70 in his life time on 10.09.1921 and it has been found by the learned court that there is no genuine cause to hold the execution process of the decree passed in favour of the decree holder thereafter rejected the misc. appeal. Both the Courts have given cogent reason. The other opposite parties are subsequent purchasers of the land and decree holder.

9. In the case of ***"Rahul S. Shah"(supra)*** relied by the

learned counsel for the petitioner in para 42 it has been held as under:-

"42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below- mentioned directions:

"1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third.

2. Party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.

3. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.

4. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

5. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

6. The Court must, before passing the decree, pertaining to.

7. Delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

8. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.

9. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

10. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a should refrain from entertaining any such applications that has already been considered by the mechanical manner. Further, the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

11. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

12 The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala-fide, resort to Sub-Rule (2) of Rule 98 of Order XXI as well as grant

compensatory costs in accordance with Section 35A.

13. Under section 60 of CPC the term "in name of the judgment debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

15. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

16. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts."

10. In view of above judgment it has been held by the Hon'ble Supreme Court that the Court has to appreciate the objection or resistance or claim to be frivolous or malafide, resort to Sub-Rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.

11. In this background what has been discussed hereinabove, it transpires that frivolously this petition has been filed that too when title suit with regard to same property in Original Title Suit No. 130 of 2023 in which other opposite parties are made defendants which is still pending.

12. In view of above facts, reasons and analysis there is no merit in this petition. Accordingly, this petition is dismissed. Pending I.A. if any, stands disposed of.

(Sanjay Kumar Dwivedi, J)

Satyarthi/A.F.R.