IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 50 of 2023

Tapan Kumar Mitra, aged about 80 years, son of Late B.N. Mitra, Resident of Ajanta Para, Hirapur, P.O. & P.S. Dhanbad, District Dhanbad, PIN Code- 826001

….. ***Decree holder/Respondent/Appellant***

Versus

1. Satyanarayan Gope,
2. Santosh Gope,
3. Mantosh Gope,

All sons of Late Bhikhu Gope and residents of Village Sabalpur, P.O. K.G. Ashram, P.S. Govindpur, District Dhanbad.

…. ***Objectors (Applicants)/Appellants/Respondents***

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant : Ms. Niharika Mazumdar, Advocate
For the Respondents :

07/**03.02.2026** Learned counsel for the appellant is present.

2. This appeal has been filed against the order/judgment dated 10.02.2022 passed in Civil Appeal No. 90 of 2020 by learned District Judge-I, Dhanbad whereby the learned District Judge-I, Dhanbad has been pleased to set-aside the order dated 13.07.2018 passed by learned Civil Judge, Senior Division-VII, Dhanbad in Civil Misc. Case No. 18 of 2018. The executing court had dismissed the petition filed under Order XXI, Rule 97 of the Code of Civil Procedure in Execution Case No. 4 of 2012 arising out of the judgment and decree dated 30.06.2012 (decree signed on 12.07.2012) passed in Title Suit No. 123 of 2008. The objection was numbered as Civil Misc. Case No. 18 of 2018

3. Learned counsel for the appellant has submitted that the appellant is the decree holder in the suit for specific performance of contract against the sole defendant namely, Koili Devi. At the stage of execution, one objection was filed on behalf of the applicants Satya Narayan Gope and two others which was opposed by the decree holder. The applicants claimed to be the rightful owner in possession of the suit land by virtue of a registered deed. Admittedly, the

objection was dismissed by the executing court at the stage of admission itself.

4. The order passed in Civil Misc. Case No. 18 of 2018 was challenged by the applicants before the 1st appellate court in Civil Appeal No. 90 of 2020. The learned 1st appellate court has set-aside the judgment of the executing court rejecting the objection of the applicants and directed the executing court to adjudicate the objection raised by the applicants, numbered as Civil Miscellaneous Case No. 18 of 2018.

5. The learned counsel for the appellant has submitted that the learned 1st appellate court has failed to apply the provisions of law correctly while setting aside the order passed by the executing court. However, during the course of hearing it is not in dispute that the objectors(applicants) were not party in the connected suit of the execution case and in the suit the sole defendant was Koili Devi.

6. The extract of the judgment passed by the learned 1st appellate court relevant for the purposes of the present case are quoted as under:-

> *"On above backdrop, after close perusal of the Annexure- 1 which is the plaint of TS No. 123 of 2008, it would appear that Koili Devi was sole defendant therein. Curiously enough the Annexure- 2 which is CC Written Statement of Koili Devi in T. S. No. 123 of 2008 as well as also Annexure- 3 which is CC of Judgment and Decree passed in TS No. 123 of 2008 are quite silent about the role and part, if any, played by Shiv Pujan Gope who admittedly in relation is the full brother of the appellants. Further more, the Annexure-3 goes to suggest that none was examined orally behalf of the defendant Koili Devi. Therefore it is difficult to infer main particularly in the context of the case at hand that appellants might have been aware or known with the pendency of title suit being its No. 123 of 2008.*
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> ……
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> *Therefore the proposition of law in, this respect, as has been laid down in Brahmadeo's case is that stranger can get his claim adjudicated by virtue of Order XXI Rule 97 of the Code even prior to losing possession to decree holder.*
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> ……..

Turning back to the case in hand, it would appear that objection raised by the appellants before the executing court was that the decree holder in Title Suit No. 123 of 2008 cleverly in connivance with defendant Koili Devi and keeping them in dark somehow had secured decree in his favour and if he is permitted to execute the decree in his favour, the appellants who are in peaceful continuous possession over the suit property will suffer adversely. The objection raised by the appellants in their petition under Civil Misc Case No. 18 of 2018 therefore in the eye of law was perfectly covered under Order XXI Rule 97 of the Code.

Accordingly, keeping into consideration all the facts and circumstances, as discussed above, the instant Civil Appeal is allowed and the order impugned dated 13.07.2020 of the executing court is set aside, directing it to adjudicate the objection(s) raised by the appellants in Civil Misc Case No. 18/2018."

7. The executing court had refused to admit the objection raised by 3rd party. This Court has gone through the impugned judgment and is of the considered view that the learned 1st appellate court by a well-reasoned judgement has rightly set aside the order of the executing court and directed the executing court to adjudicate the objection being Civil Miscellaneous Case No. 18 of 2018.

8. This Court is of the view that no substantial question of law is involved in this case. Accordingly, this 2nd appeal is dismissed.

9. Pending interlocutory application, if any, is also dismissed as not pressed.

10. Let this order be communicated to the learned court concerned through 'FAX/email'.

(Anubha Rawat Choudhary, J.)

Date of order: 03.02.2026
Pankaj
Date of Uploading:16.02.2026