
(2007) 03 PAT CK 0156
In the Patna High Court
Case No : Second Appeal No. 107 of 2002

Bhola Yadav and Another	Vs	APPELLANT
Yadunandan Pd. Yadav and Others		RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35, Order 21 Rule 97, Order 41 Rule 5, 151

Citation : (2007) 3 PLJR 79

Hon'ble Judges : Chandra Mohan Prasad, J

Bench : Single Bench

Advocate : S.P. Srivastava, for the Appellant; Keshav Srivastava, for the Respondent

Judgement

Chandra Mohan Prasad, J.

I.A.No. 5726/06

1. I.A. No. 5726 of 2006 is a petition u/s 151 CPC wherein prayer has been made by the petitioner-plaintiff respondents for execution of decree over Schedule-I lands under decree of the courts below excluding that portion of the land over which stay of the execution has been granted vide this Court's order dated 26.4.2004. In this I.A. petition, incidentally it has also been mentioned by the petitioner-plaintiff-respondents that the appellants have also done some acts of dispossession of the plaintiff-respondents from Schedule-I lands but the Learned Counsel for the petitioner-plaintiff-respondents does not press this matter nor raised it at this stage saying that those matters relating to lands under Schedule-I can be considered and any relief could be made available to them only after the judgment under second appeal. Learned Counsel for the petitioner-plaintiff-respondents also submits that he has taken some steps for some relief available to them by filing petition before the courts below. Thus, the matter relating to Schedule-I lands is not raised or pressed by the Learned Counsel for the petitioner-plaintiff-respondents at this stage. This has to be mentioned here that

the petitioner-plaintiff-respondents had filed the suit before the trial court with a prayer for declaration of title and recovery of possession over Schedule-II lands and declaration of title and confirmation of possession over Schedule-I lands. The suit was decreed by the trial court and the declaration of the title of the plaintiff-respondents over Schedule-II lands was made and recovery of possession over Schedule-II lands was also ordered. So far the lands under Schedule-I are concerned, the trial court granted a decree of declaration of title and confirmation of possession of the petitioner-plaintiff-respondents over it with a further declaration of title and recovery of possession from Schedule-II lands and declaration of title and confirmation of possession over Schedule-I lands. The suit was decreed by the trial court and the declaration of the title of plaintiff-respondents over Schedule-II lands was made and recovery of possession over Schedule-II lands was also ordered. So far the lands under Schedule-I are concerned, the trial court granted a decree of declaration of title and confirmation of possession of the petitioner-plaintiff-respondents over it. The decree of the trial court was confirmed by the lower appellate court. Thereafter this second appeal has been preferred by the defendants. During the pendency of the second appeal, the appellant-defendants filed a petition under Order 41 Rule 5 CPC for staying the execution of the decree in the court below under Execution Case No. 2 of 1997, so far the lands under Schedule-II were concerned. this Court vide Para-10 & 11 of the order dated 26th April 2004 granted the following reliefs:

"10. The proceedings in the execution case bearing No. 2 of 1997, pending in the court of Sub-Judge-I at Supaul is stayed with following conditions and stipulation:-

(i) The stay order will operate only to the residential portion and to 3 feet land around it plus the passage. In the rest of the land under Schedule 2 of the plaint there will be no stay order.

(ii) To secure the interest of the respondents, who have won in both the lower courts, it is ordered that the stay is subject to deposit an amount of Rs. 300/- per month from the date of filing of this appeal which arrear upto date will be deposited within two months of this order in the execution court. Thereafter, amount of Rs. 300/- per month will be continued to be deposited in the court by 15th day of each succeeding month. Should the appellants fail to comply this order presently, or in future, any time, then the stay would stand vacated. The amount so deposited in Execution Court will abide the decision in this second appeal.

11. There will be no stay of the execution proceeding with regard to other properties in the suit."

2. Thus it is quite clear that vide this Court's order dated 26th April 2004 this Court granted the stay of the execution of the decree of the court below only to the extent as mentioned in Para-10 & 11 of the order.

3. But the grievance of the petitioner-plaintiff-respondents under this I.A. Petition is that despite the stay granted by this Court over a portion of Schedule-II lands, they are not being made available to proceed with the execution over the remaining portion of Schedule-II lands over which there is no stay of the execution of the decree.

4. Learned Counsel for the appellant-defendants submits that the appellants-defendants have nothing to do with the portion of lands excluding those under Schedule-II lands over which there has not been stay of the execution of the decree and that they have no kind of obstruction over execution of decree with regard to Schedule-II lands over which this Court has not granted stay. Learned Counsel for the plaintiff-respondents submitted that he has filed the execution case for execution of decree over Schedule-II lands but he concedes that he has not put forth any petition with the facts as placed before this Court under the instant I.A. Petition. Learned Counsel submits that he simply wants a clarification by this Court only that there has not been any stay by this Court except the order dated 26.4.2004 staying the decree in part to the extent and with the terms as in Paras 10 & 11 of the order and that there is no bar in execution of the decree over Schedule-II lands on which any stay order has not been made. The Learned Counsel for the appellant-defendants fairly submits that vide this Court's order dated 26th April 2004 the decree has been stayed partially to the extent as mentioned in Para 10 & 11 of the order and that the appellant-defendant have nothing to say against the execution of the decree over Schedule-II lands with regard to which no stay order has been passed by this Court.

5. In the aforesaid facts and submissions of the parties, it is hereby mentioned that vide this Court's order dated 26th April 2004 this Court has granted a partial stay order with regard to stay of the execution of the decree over Schedule-II lands to the extent as mentioned in Para 10 & 11 of the order and that there is no stay of the execution of the decree beyond the stay as granted vide order dated 26th April 2004.

6. The petitioner-plaintiff- respondents may take recourse to seeking relief of the execution of the decree over which there has not been any stay granted by this Court by filing appropriate petition before the executing court under Order 21 Rule 35 or 97 CPC and thereupon the executing court will pass appropriate order in accordance with law. This I.A. Petition is accordingly disposed of.