

(1935) 02 PAT CK 0004
In the Patna High Court
Case No : Civil Revn. No. 27 of 1934

Daroga Prasad Sahu and Others

APPELLANT

Vs

Bhagwati Prasad Singh and others

RESPONDENT

Date of Decision : 01-02-1935

Acts Referred:

Citation : (1935) 02 PAT CK 0004

Judgement

Wort, J.—This rule is directed against the order of the Subordinate Judge dismissing the decree-holders' application for delivery of possession. The question is whether the Court had jurisdiction to determine the matter in the form in which the matter came before it. It purported to be an application by persons other than the judgment-debtors under O. 21, R. 100. In the first instance it is quite clear that if the application was properly maintainable under O. 21, R. 100 the order which the Judge had jurisdiction to make was not an order dismissing the application by the decree-holders for possession but an order under O. 21, R. 101, that is, putting the applicants into possession. The very fact that it became necessary for the Judge to make the order in the form in which he has made it, shows that both the application and the order were entirely without jurisdiction because no such order as he has made is known to the Code of Civil Procedure, that is to say, in an application of the kind which was before him. O. 21, Rr. 97 to 99 deal with an application or a complaint by the decree-holder who is resisted or obstructed in obtaining delivery of possession of a property sold in execution, and, when such an application is made, the Code provides for the determination of the dispute and eventually for making an order under O. 21, R. 98 or R. 99 according to the facts proved in the case. Now the only application which is contemplated by the Code by a person in the position of the present petitioners is one under O. 21, R. 100 in a case where a person in that position is dispossessed.

2. There are a number of points raised in this case as to whether the petitioners come within the rules on the merits, that is to say, whether they are persons other than the judgment-debtors. But I should feel inclined to hold, if the matter

came up for determination, that having regard to the fact that a decree was made against their father the petitioners who are the sons of the judgment-debtor would be prima facie bound by that decree and could not therefore; be said to be persons other than the judgment-debtors. Be that as it may, it seems to me that the objection to the jurisdiction of the Judge is based on the plain meaning of the words of O. 21, R. 100 to which I have referred. The order provides that a person may make an application when he is dispossessed. In the Calcutta High Court it has been held in Ibrahim Mullick v. Ramjadu Rakshit, (1903) 30 Cal 710 that such a person is not dispossessed within the meaning of the order when symbolical possession is given, and I should feel inclined to come to the same conclusion if that was the point determining this case. But in this case the parties have not gone so far as they had in the Calcutta case referred to. Nothing more has been done in this case than an application by the decree-holders for possession. It cannot be said that persons other than the judgment-debtors have been dispossessed because there has been no possession given to the decree-holders, that yet remains to be done, and to put it shortly there is no jurisdiction in the Judge to determine in the form of an anticipatory application a matter of this kind. It is only when the person is dispossessed that an application of this kind can come before the Judge and he certainly could not make such an order as he has done under O. 21, R. 101. In those circumstances think the Rule must be made absolute and the order of the Subordinate Judge discharged with costs hearing fee two gold mohurs.