

(2007) 06 PAT CK 0007
In the Patna High Court
Case No : C.R. No. 1090 of 2006

Dr. Mansoor Alam Khan @ Mansoor Alam Khan and Another	APPELLANT
Vs	
Dayanand Singh and Another	RESPONDENT

Date of Decision : 01-06-2007

Acts Referred:

Citation : (2007) 4 PLJR 85

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Petitioners are the defendants/judgment debtors. They have preferred present civil revision against the order dated 3.6.2006 passed by Subordinate Judge, VI, Patna in Execution Case No. 6 of 1999 whereby petitioners objection challenging the maintainability of the execution proceeding has seen rejected. Opposite party Nos.1 and 2 are plaintiff/deGREE holder. Opposite party Nos. 1 and 2 had filed Title Suit No.178 of 1994 for specific performance of contract in respect to the lands measuring an area of 4 Bighas, 4 Kathas and 6 Dhurs of Mauja Saichak in the district of Patna. The reliefs prayed for by the plaintiffs was for execution of sale deed with respect to those lands on the basis of a deed of agreement for sale dated 25.12.1990. The defendants/petitioners appeared in the suit, filed their joint written statement, claiming that plaintiffs are not entitled for the reliefs due to nonperformance of contract by the plaintiffs within the time fixed in the deed of agreement for sale. The suit was contested but subsequently at the intervention of well wishers a compromise petition was filed by the parties. On 13.1.1997 a compromise order/deGREE was passed according to which sale deeds in respect of 4 Bighas, 4 Kathas and 6 Dhurs of lands were to be executed by the defendants on payment of consideration money by the plaintiffs, on or before 31.3.1997.

2. Case of defendants/petitioners is that before 31.3.1997 decree holders deposited Rs. 4,14,575/- for execution of sale deeds in respect to an area of 25

Kathas. In lieu of this consideration amount sale deed was executed by the defendants/judgment debtors. Once decree holders admitted the terms and conditions in the compromise order/decreed after expiry of 31.3.1997 the decree holders are not entitled to get the sale deeds executed for the rest of the lands.

3. The decree holders filed two execution cases i.e. Execution Case Nos. 6 of 1999 and 7 of 1999. The judgment debtor petitioners raised their objection regarding the maintainability of the execution case. In the execution case filed by Dayanand Singh opposite party No.1 it was stated that opposite party No. 2 Akshay Kumar Singh ceased to have any interest as sale deed has already been executed in his favour with respect to 25 kathas of lands and as per compromise decree he is entitled for 1/3rd. share out of total 4 Bighas 4 Kathas and 6 Dhurs. His total shares comes to 28 kathas out of which 25 kathas has already been transferred in favour of his nominee Mitra Mandal Grin Nirman Samittee as such opposite party No. 2 has ceased to have any interest left in execution of the decree. On the other hand Akshay Kumar Singh opposite party No. 2 who filed Execution Case No. 7 of 1999 that he is also a decree holder and the sale deed must be executed in his favour as well. Petitioner filed objection in both the execution cases that on account of delay on the part of the proposed vendee the earnest money stood forfeited and the execution case is fit to be rejected on the ground of maintainability itself. The objection of the judgment debtor (petitioners) on the point of maintainability was earlier rejected. Again, similar objection of maintainability was raised, which has been rejected by the impugned order against which present civil revision application has been filed.

4. An order of stay was passed on 29.8.2006 in the civil revision and for vacating that stay opposite party No.1 Dayanand Singh filed I.A. No. 354 of 2007. Since all the parties have entered appearance civil revision application was heard on merit instead of hearing on the petition filed for vacating the stay. Opposite party No. 1 in his interlocutory application- has stated that after passing of the compromise order/decreed the decree holder opposite party No.1 was ready to deposit the consideration amount for execution of the sale deeds, but the judgment debtor avoided the same and because of this execution case was filed by opposite party No.1. During execution proceeding the judgment debtor had shown their willingness for execution of sale deed in case the decree holders will deposit the consideration amount. The execution court on consideration of these facts passed an order on 24.7.2004 and directed the decree holders to deposit the consideration amount through bank draft in the court within 15 days from the date of the order and also directed the judgment debtor to execute necessary sale deeds in favour of the decree holders within a fortnight after deposit of consideration money. The opposite party in compliance of the order of the court deposited Rs. 5,26,660/- through bank draft. Since the opposite party No.1 deposited the consideration money, the judgment debtors instead of executing the sale deed raised objection regarding the maintainability of the execution proceeding which has been rejected by the impugned order of the executing court.

5. In the civil revision application petitioner has not raised any question of law. The impugned order has been challenged on pure question of facts. The execution proceeding was instituted by the decree holders in the year 1999. The judgment debtors thereafter raised question of maintainability which was rejected by the executing court. Against that order the judgment debtors did not prefer any civil revision application, rather the judgment debtors shown their willingness for execution of sale deed with respect to the residual land for which sale of agreement was executed in between the parties, in case, the decree holders deposits the consideration amount. The executing court by order dated 24.7.2004 directed the decree holder to deposit entire amount within 15 days. This order was subsequently modified with the consent of the parties by order dated 18.9.2005, 31.10.2005. By these order period for depositing the consideration money as well as execution of sale deed was extended with the consent of the parties. All these orders were not challenged by the judgment debtors. The decree holder/opposite party No.1 has already deposited consideration amount, as not a single deed has been executed by the judgment debtors in his favour though he is entitled for 2/3rd share, out of 4 Bighas, 4 Kathas 6 Dhurs land when the opposite party No.1 deposited entire consideration amount, thereafter, the judgment debtors filed an application challenging the maintainability of the execution proceeding, once they agreed for extension of time, going against the terms and conditions mentioned in the compromise decree. They are not entitled for taking such plea subsequently that the executing court cannot go beyond the terms of the compromise decree. Such plea is barred by estoppel on account of petitioners/judgment debtors own act.

6. I do not find that the impugned order suffers from either any jurisdictional error or apparent illegality. This civil revision application is dismissed.

7. Counsel appearing for the judgment debtor has submitted that the agreement of sale was executed in the year 1990, compromise decree was passed in the year 1997. After ten years of compromise decree the judgment debtors are not bound to execute sale deeds for the same consideration amount as price of the land has increased exorbitantly within this period. The judgment debtor cannot raise such objection as earlier they themselves have shown their eagerness to execute sale deed for same consideration amount. If the sale deed was not executed within the stipulated time because of the pendency of the litigation, no such objection can be raised by the judgment debtors. This application is dismissed.