
(2012) 01 PAT CK 0123
In the Patna High Court
Case No : CWJC No. 18122 of 2011

Girija Devi

APPELLANT

Vs

Lallan Singh and Others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 4 PLJR 164

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—Heard the learned counsel Mr. Mahesh Narayan Parvat appearing on behalf of the petitioner and the learned counsel Mr. Janardan Prasad appearing on behalf of the respondents. This application has been filed by the plaintiff decree holder petitioner under Article 227 of the Constitution of India against the order dated 12.6.2008 passed by Sub-Judge-5th, Chapra in Execution Case No. 1 of 2004, whereby the learned court below allowed the application filed by the judgment-debtor respondents for appointment of a Pleader Commissioner for the purpose of local investigation and submission of the report.

2. The learned counsel for the petitioner submitted that partition suit was filed and in the said suit prayer was made for declaration certain deeds of transfer as illegal and not binding on the plaintiff. The said suit was decreed. The defendant respondents filed title appeal before the first appellate court which is still pending. In the meantime, final decree proceeding was conducted and ultimately after appointment and submission of report of Pleader Commissioner the final decree was sealed and signed. According to the learned counsel for the petitioner no appeal has been filed against the final decree. It is settled law that the final decree is executable and not the preliminary decree. To execute the final decree the plaintiff petitioner filed Execution Case No. 1 of 2004. In this execution case

the present defendant respondents filed an application for appointment of Pleader Commissioner which has been allowed. According to the learned counsel for the petitioner in the execution case earlier Pleader Commissioner was appointed and delivery of possession according to the final decree was affected and possession of the property to the extent of the share of the petitioner was delivered to the petitioner. Thereafter, the application has been filed by the defendant. The learned counsel further submitted that unless the previous Pleader Commissioner's report is set aside the court could not have appointed the second Pleader Commissioner and moreover according to the defendants those properties which were delivered to the petitioner is not the subject matter of the partition suit, the executing court has no jurisdiction to execute the decree.

3. On the contrary, the learned counsel appearing on behalf of the respondents submitted that the properties which have been delivered to the present petitioner were not the subject matter of the suit and the Pleader Commissioner if appointed it will not affect the right, title, interest of the present petitioner and therefore, he has not locus standi to challenge the order passed by the court below or that the order in supervisory jurisdiction cannot be interfered with.

4. It is admitted that the delivery of possession has already been affected. If the submission of the learned counsel for the respondents is accepted that the properties which have been delivered to the petitioners are not the subject matter of the suit then the present respondents have no locus standi to challenge the delivery of possession and moreover the present respondents have not filed any appeal against the final decree. The property is of the third person according to the respondents but the said person is not coming before the court. The defendant respondents who are the judgment-debtor are filing the application and on their application the learned court below has appointed the Pleader Commissioner and thereby he is trying to investigate a new fact which is being introduced by the defendant respondents. In such view of the matter, in my opinion, the learned court below has exercised the jurisdiction in the manner not permitted by law and thereby occasioned a failure of justice. Therefore, impugned order is set aside and the writ application is allowed.