
(2007) 07 PAT CK 0008
In the Patna High Court
Case No : Civil Revision No. 342 of 2004

Lalit Prasad Sah and Others

APPELLANT

Vs

Mahendra Sah and Others

RESPONDENT

Date of Decision : 10-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 103, Order 21 Rule 97, Order 21 Rule 98

Citation : (2007) 4 PLJR 427

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : S.S. Dwivedi and Pankaj Kumar Sinha, for the Appellant; Sanjeev Ranjan for O.P. No. 1, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.—Petitioners-objectors, aggrieved by the order dated 21.2.2004 passed by the Munsif, 1st Munger in Title Execution Case No. 18 of 1976 directing for issuance of delivery of possession and for deputation of police force, have preferred this application. Decree-holders-opposite party Nos. 1 and 2 filed application for execution of the decree of ejectment dated 31.1.1972 passed in Title Suit No. 184 of 1970. Saia suit was filed impleading Musahru Sah, uncle of these petitioners, on the ground of default of arrears of rent, which was decreed. Miscellaneous case, filed by said Musahru Sah for setting aside the ex parte decree was dismissed so also the appeal i.e. Misc. Appeal No. 3 of 1973.

2. Petitioners filed Title Suit No 104 of 1974 for declaration of their title and further, for a declaration that the decree passed in Title Suit No. 184 of 1970. is collusive and not binding on them. The decree-holder, put the decree for execution which was registered as Execution Case No. 18 of 1976. It seems that the petitioners' father Banarsi Sah had also objected to the execution of the decree, which led to registration of Misc. Case No.1 of 1978. Munsif, 1st, Munger, by order dated 6.3.1980, dismissed the said case and aggrieved by the same,

Banarsi Sah, father of the petitioners, filed Misc. Appeal No. 18 of 1980 and the Additional District Judge, II, Munger, by judgment dated 10th of February, 1993, dismissed the appeal, inter alia, holding as follows:-

"Thus the evidence adduced on behalf of the plaintiff that the suit land was allotted to him on partition and that he reside in the suit house is not at all convincing and acceptable. On the other hand, materials on the record amply show that the plaintiff has been set up by his brother Mushahru Sah who is the J. Dr. in execution case."

3. Petitioners then filed application under Order 21 Rule 97 of the Code of Civil Procedure, which was registered as Misc. Case No. 17 of 2000 and according to them, three witnesses have been examined. In the execution case, decree holder prayed for deployment of police force for the execution of the decree and delivery of possession, which was objected to by the petitioners.

4. By reason of the impugned order, the learned Munsif had directed for issuance of delivery of possession and deployment of police force for executing the decree.

5. Mr. Shashi Shekhar Dwivedi, Senior Advocate, appearing on behalf of the petitioners, submits that once the application filed by the petitioners under Order 21 Rule 97 of the CPC has been entertained, no delivery of possession is fit to be granted till its adjudication. In support of his submission, he has placed reliance on a judgment of the Supreme Court in the case of Babulal vs. Raj Kumar and Another, (1996)3 SCC 154, and my attention has been drawn to following passage from paragraph No. 6 of the judgment, which reads as follows;-

"6. xxx It would, therefore, be clear that an adjudication is required to be conducted under Order 21, Rule 98 before removal of the obstruction caused by the objector or the appellant and a finding is required to be recorded in that behalf. The order is treated as a decree under Order 21, Rule 103 and it shall be subject to an appeal. Prior to 1976, the order was subject to suit under 1996 Amendment to CPC that may be pending on the date the commencement of the amended provisions of CPC was secured. Thereafter, under the amended Code, right of suit under Order 21, Rule 63 of old Code has been taken away. The determination of the question of the right, title or interest of the objector in the immovable property under execution needs to be adjudicated under Order 21, Rule 89 which is an order and is a decree under Order 21, Rule 103 for the purpose of appeal subject to the same conditions as to an appeal or otherwise as if it were a decree. Thus, the procedure prescribed is a complete code in itself. Therefore, the executing court is required to determine the question, when the appellants had objected to the execution of the decree as against the appellants who were not parties to the decree for specific performance."

6. Reliance has also been placed on the decision of the Supreme Court in the case of Anwarbi vs. Pramod D.A. Joshi and Ors., (2000)10 SCC 405, in which it has been held as follows:-

"4. Learned counsel for the appellant has contended that the appellant is being repeatedly threatened with dispossession. We, therefore make it clear that the possession of the appellant cannot be disturbed except in accordance with law; and that in view of the obstruction raised by her to the execution of the said decree, the rights of the obstructionist will have to be decided in appropriate proceedings, in accordance with law. Unless and until such proceedings terminate in favour of the decree-holder, the decree-holder cannot take possession and the appellant is entitled to retain possession."

7. My attention has also been drawn to a judgment of this Court in the case of Prabhat Kumar Sinha vs. Smt. Nirmala Sinha and Another, AIR 1999 Patna 130 [; 1999(1) PLJR 19], wherein it has been held as follows:-

"21. The contention of learned counsel for the opposite parties that it is only the decree-holder who is entitled to make an application under Order XXI, Rule 97, C.P.C, informing the Execution Court about the resistancy/obstruction in the execution of the decree and no stranger or even person claiming through a judgment-debtor is entitled to make such an application, in our opinion is untenable."

8. Mr. Sanjiv Ranjan, appearing on behalf of the decree-holder-opposite party Nos. 1 and 2, however, submits that as a matter of rule, it cannot be said that till final hearing of an application under Order 21 Rule 97 of the Civil Procedure Code, delivery of possession cannot be effected.

9. Having appreciated the rival submission, I do not find any substance in the submission of Mr. Dwivedi and the authorities relied on, in no way, supports his extreme submission. In the miscellaneous appeal filed by the petitioners' father, the appellate court has clearly held that the petitioners' father was set up by his brother Musahnj Sah, the judgment-debtor, in the execution case. In my opinion, if this wide proposition that once an application under Order 21 Rule 97 of the CPC is entertained, delivery of possession cannot be effected, will lead to dangerous result. The parties may resort to litigation after litigation and the decree-holder shall be deprived of the fruits of the decree. This will lend support to too known saying that real ordeal of the decree-holder begins after he had obtained the decree.

10. Here, in the facts of the present case, I am of the opinion that when the petitioners' father was held to be a person set up by his brother, the judgment-debtor, it will be travesty of justice, if the decree-holders now at the instance of his sons, are deprived of the fruits of the decrees only on the ground that petitioners have chosen to file application under Order 21 Rule 97 of the Code of Civil Procedure. I do not find any merit in this application and it is dismissed with cost, which I assess at Rs. 550/- to be paid by the petitioners to opposite party Nos. 1 and 2.