

(2006) 02 PAT CK 0039
In the Patna High Court
Case No : F.A. No. 102 of 1991

Manju Kumari Sharma and Others	Vs	APPELLANT
Bhupendra Narain Singh and Others		RESPONDENT

Date of Decision : 13-02-2006

Acts Referred:

Citation : (2006) 02 PAT CK 0039

Final Decision : Dismissed

Judgement

M.L. Visa, J.—Respondent No 1 has filed the application under consideration u/s 151 of Code of Civil Procedure. (In short "C P C"; for vacating order of stay of delivery of possession passed by this Court on 02.04.1991.

2. The case of petitioner. who is respondent No 1. is that this Court. on a petition filed by the appellants for stay of execution of decree, passed orders staying the further proceeding of Execution Case No 4 of 1991 pending in the Court of Subordinate Judge IV, Chapra in relation to delivery of possession of the suit, house and appellants were directed to execute a bond of Rs. 3.000/- with one surety undertaking thereby to vacate the property in suit within one month if the appeal is dismissed and in default to pay a sum of Rs. 3.000/- to decree holder with a further undertaking that they would not change the status quo of the property in their possession failing which the aforesaid amount shall be forfeited.

3. The case of petitioner is that after passing of this order, the appellants have sold the suit house by executing sale deed dated 21.10.2002 in favour of Ramesh Prasad Yadav and Sri Ram Tiwary and out the purchasers in possession of the suit house and in this way they have violated the stay order dated 02.04.1991. Prayer has been made for vacating this stay order.

4. Prayer of petitioner has been opposed by the appellants as well as by Ramesh Prasad Yadav and Sri Ram Tiwary alleged to be purchasers of suit house from appellants and whose prayer for impleading them as party respondents in the present appeal has already been allowed by order dated 17.02.2000 (hereinafter

referred to as "the interveners"

5. The case of appellants and interveners is that appellants are in possession of the suit house and earlier also, a petition under Order 39 Rule 2A of C P C for violation of order dated 02.04.1991 was filed by respondent No 1 which was numbered as M J C No. 922 of 2003 which, after full enquiry by this Court, was dismissed on 25.08.2005. According to appellants and interveners. present application under consideration has been filed on the same grounds which is not maintainable. They have prayed for rejection of prayer of petitioner.

6. Learned counsel appearing on behalf of petitioner has submitted that after passing order on 02.04.1991 directing the appellants to maintain status quo in respect of suit house, appellants, by executing sale deed have sold the house in favour of interveners and in this way, they have violated the order which should now be vacated. According to him, execution of sale deed during the period when maintaining status quo in respect of property was in force is illegal in view of decision reported in Satyabrata Biswas and others Vs. Kalyan Kumar Kisku and others, . He has admitted that, earlier petitioner had filed a petition under Order 39 Rule 2A of C P C which was numbered as M J C No 922 of 2003 and which was dismissed by this Court on 25.08.2005 but has submitted that after dismissal of M J C No 922 of 2003, petitioner has come to know some new facts. About these new facts, case of petitioner is that purchaser/intervener Ramesh Prasad Yadav filed a petition before Chapra Nagar Parishad on 23.10.2002 that he had purchased land of that holding and he is in possession and requested for mutation of his name (Annexure-5 of supplementary affidavit of application). Thereafter, notices were issued and objections were invited and a report was called for from TC/TD and on receipt of report that Ramesh Prasad Yadav alongwith his family members was residing in the part of house, name of Ramesh Prasad Yadav was mutated vide order dated 18.08.2003 (Annexure-6 of supplementary affidavit). It is further argued that in view of aforesaid facts in M J C No 922 of 2003, appellants sworn a false affidavit that they are residing in the suit house and intervener Ramesh Prasad Yadav also gave false statement on 03.12.2003 before Joint Registrar of this Court in M J C No 922 of 2003 that he is not residing in the purchased part of house.

7. Learned counsel of appellants submits that in M J C No 922 of 2003, evidence of purchaser was recorded by Joint Registrar of this Court and that evidence was recorded much after 23.10.2002 and 18.08.1003 when intervener Ramesh Prasad Yadav is said to have filed petition for mutation and his name was mutated but at that time not a suggestion to him was given that he had made any prayer for mutation of his name in respect of suit house. Learned counsel of petitioner submits that the petitioner was not aware of this fact at that time.

8. Learned counsel of interveners. who are said to be purchasers during his argument, has submitted that interveners are not in possession of suit house which is still in possession of appellants.

9. The question of execution of sale deeds by appellants in respect of suit house in favour of interveners. the allegation of petitioner that appellants have violated the order dated 02.04.1991 by which they were directed to maintain status quo by executing sale deed in favour of interveners etc have already been fully examined in M J C No 922 of 2003 after recording evidence adduced on behalf of parties. Learned counsel of petitioner has submitted that matter of M J C No 922 of 2003 was the matter between Court and appellants who were contenders and petitioner had nothing to do with the finding of that case. His Further argument is that petitioner is now making altogether a different prayer which is for vacating the stay order because appellants have not fulfilled the conditions which were imposed on them while passing stay order. As stated above, M J C No 922 of 2003 was started on the petition filed by the petitioner under Order 39 Rule 2A of C P C and matter was same that by executing sale deeds in favour of interveners, appellants have violated the order passed by this Court on 02.04.1991. The contention of petitioner was not proved, therefore, that case was dismissed The petitioner has again cone up with the same allegation although this time he has prayed for a different kind of relief. Since the basis of reliefs sought by the petitioner is the same which was in M J C No. 922 of 2003 and which was not found proved, I do not find any merit in the application of petitioner under consideration.

10. In the result, the prayer of petitioner for vacating the stay order dated 02.04.1991. passed by this Court is rejected and his application is dismissed.

I A No 2711 of 2003 stands disposed of.