
(2014) 01 PAT CK 0141
In the Patna High Court
Case No : Civil Revision No. 802 of 2010

Md. Moiuddin @ Moiudin

APPELLANT

Vs

Kasturba Devi

RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Citation : (2014) 2 BBCJ 462 : (2014) 2 BLJud 1

Hon'ble Judges : Mr. Mungeshwar Sahoo, J.

Bench : Single Bench

Advocate : Mr. Pramod Kr. Sinha, Advocate, for the Petitioner; None, for the Respondent

Final Decision : Allowed

Judgement

Mr. Mungeshwar Sahoo, J.(Oral)—Heard the learned counsel, Mr. Pramod Kmar Sinha, appearing on behalf of the petitioner. In spite of service of notice, nobody appeared on behalf of the opposite parties.

2. This civil revision application has been filed against the order dated 04.09.2010 passed by the learned Munsif, Ist Court, Begusarai in title execution case No.7 of 2008 whereby the Court below rejected the application under Order 21 Rule 97 and 99 and 100 of the Code of Civil Procedure as not maintainable without deciding the same.

3. The learned counsel submitted that the petitioner is not party to the title suit No.37 of 1989 which gave rise to this title execution case No.7 of 2008. His father was also not party to the said suit. The Court below in the impugned order wrongly mentioned that the petitioner's father had filed title suit No.27 of 1989 which is incorrect and even if it is held that it is typing mistake in place of title suit No.37 of 1989, it is typed as 27 of 1989 then also the fact is that the father of the petitioner or the petitioner were never the party.

4. Perused the order. From perusal of the impugned order, it appears that the learned Court below held that the petitioner's father had filed title suit No.27 of

1989 which was dismissed and thereafter the petitioner was directed to produce the documents but he was not producing, therefore he rejected the application as not maintainable.

5. In the case of *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal* AIR 1997 SC 856= 1997 (3)SCC 694, the Hon"ble Supreme Court has held that the executing Court must first adjudicate upon the objection of the objector on merit under Rule 97 of Order 21 CPC. The Hon"ble Supreme Court also held that it should not be insisted that possession to be handed over first and then application under Order 21 Rule 99 be allowed later on complaining about dispossession. This is the consistent view of the Hon"ble Supreme Court. In this matter, the reference may be made to the case of *Srinath v. Rajesh* AIR 1998 SC 1827, *AIR 2002 SC 3083 Tanzeem-e-Sufia v. Bibi Haliman* and *AIR 2004 SC 511 Ashan Devi v. Phulwasi Devi*.

6. The learned Court below without considering these settled principle of law has rejected the application as not maintainable, particularly when it is admitted fact that the petitioner"s father were not party to the title suit giving rise to the title execution case and the present petitioner is claiming independent title to the suit property. In view of the above fact, this revision application is allowed. The impugned order dated 04.09.2010 is set aside. The executing Court is directed to register the application / objection filed by the petitioner as miscellaneous case and decide the same according to law.