

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1183 of 2024

Ajay Kumar Son of Late Prem Chand Prasad Kashyap @ Prem Chndra Prasad Resident of Mohalla-Karan Sarai, P.O and Police Station- Sasaram, District-Rohtas.

... .. Petitioner/s

Versus

1. Devidin Prasad son of late Antu Sah @ Antu Ram Resident of Mohalla Chawar Takiya, P.O. and Police Station- Sasaram, District- Rohtas.
2. Most. Kusum Kunwar W/o Late Raghav Chand Prasad resident of Mohalla-Chawar Takiya, P.O and Police Station-Sasaram, District-Rohtas.
3. Kapil Kumar Gupta S/o Late Raghav Chand Prasad resident of Mohalla-Chawar Takiya, P.O and Police Station-Sasaram, District- Rohtas.
4. Sandeep Kumar Gupta S/o Late Raghav Chand Prasad resident of Mohalla-Chawar Takiya, P.O and Police Station-Sasaram, District- Rohtas.
5. Vikash Kumar Gupta S/o Late Raghav Chand Prasad resident of Mohalla-Chawar Takiya, P.O and Police Station-Sasaram, District- Rohtas.
6. Most. Sarita Kunwar W/o Late Shankar Prasad Gupta resident of Mohalla-Chawar Takiya, P.O and Police Station-Sasaram, District- Rohtas.
7. Deepak Kumar Gupta S/o Late Shankar Prasad Gupta resident of Mohalla-Chawar Takiya, P.O and Police Station-Sasaram, District- Rohtas.
8. Prakash Kumar Gupta S/o Late Shankar Prasad resident of Mohalla- Chawar Takiya, P.O and Police Station-Sasaram, District- Rohtas.
9. Aakash Kumar Gupta S/o Late Shankar Prasad Gupta resident of Mohalla-Chawar Takiya, P.O and Police Station-Sasaram, District- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Dubey, Advocate
Mr. Kumar Gaurav, Advocate
For the Respondent/s : Mr. Jitendra Prasad Singh, Sr. Advocate
Mrs. Sripriya Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 04-03-2025

Record taken up on mentioning being made on behalf
of the petitioner and I intend to dispose of the petition at the
stage of admission itself.



2. Heard learned counsel for the petitioner as well as learned senior counsel for the respondents.

3. The petitioner is aggrieved by the order dated 29.08.2024 passed by learned Munsif 1st, Sasaram, Rohtas in Execution Case No. 06 of 2011 arising out of Eviction Suit No. 03 of 1998, whereby and whereunder the petition dated 13.03.2020 filed by the petitioner under Order 21 Rule 29 read with Section 151 of the Code of Civil Procedure (hereinafter 'the Code') was rejected.

4. Learned counsel for the petitioner submits that in the eviction suit it was the case of the plaintiffs/respondents that the defendant/petitioner was tenant of one Ramji Prasad Sahu from whom the plaintiff have purchased the property in question through registered sale deed dated 15.03.1996 for consideration amount of Rs.4,00,000/- (Four lakhs) and in this manner the defendant became his tenant. The defendant appeared and contested the suit claiming that the sale deed executed in favour of the plaintiffs was illegal transaction. Issues were framed and the parties led evidence and ultimately the suit was decreed in favour of the plaintiffs/respondents. Title Appeal No. 56 of 2011 was preferred by the defendant/petitioner. The appellate court confirmed the decree modifying the amount of rent. Second



Appeal No. 11 of 2019 against the said judgment and decree of first appeal was dismissed vide order dated 11.07.2019. Learned counsel further submits that thereafter the petitioner filed Title Suit No. 257 of 2020 in the court of learned Munsif 1st, Sasaram, Rohtas against the present respondents and others for declaration that petitioner is tenant of defendant 1st set on month to month tenancy and defendant 1st and 2nd set have no right to evict the defendants from the suit property. Learned counsel further submits that in earlier eviction suit, none of the courts considered the issue that total area of old Plot No. 337 was 40 'kari' (4 decimals) out of which defendant 2nd set have purchased only 927.50 square feet which does not contain disputed shop in the possession of the petitioner and hence, the entire proceeding was vitiated and the respondents have no right to evict the petitioner from the suit land. Since Execution Case No. 06 of 2011 has been going on where Title Suit No. 257 of 2020 is pending, petitioner filed application dated 13.03.2020 under Order 21 Rule 29 read with Section 151 of the Code to stay the proceeding of Execution Case No. 06 of 2011 till disposal of Title Suit No. 257 of 2020. The respondents filed their rejoinder and the learned executing court vide order dated 29.08.2024 dismissed the petition dated 13.03.2020 filed by the



petitioner which is under challenge before this Court.

5. Learned counsel reiterates that the none of the courts take into consideration while decree is being sought to be executed against 4 decimals of land, but the sale deed is only with regard to 2 decimals of land equivalent to 927.50 square feet and for this reason, the learned executing court should have taken into consideration this fact and considering the pendency of the title suit, should have stayed the further proceeding in the execution case. Moreover, as the title suit of the petitioner is pending in the same court in which the execution is pending with regard to the same subject matter, the learned executing court should have taken all these facts into consideration but it failed to do so and hence, the impugned order is not sustainable.

6. Learned senior counsel appearing on behalf of the respondents vehemently contended that there is no infirmity in the impugned order as the learned executing court has considered each and every aspect of the matter and bare perusal of the impugned order shows that all the issues raised by the petitioner have been considered by the learned executing court. The petitioner raised these issues before different courts and all the contentions have been rejected by the judgment and decree in the learned trial court as well as appellate court and second



appeal. Learned senior counsel further submits that the eviction suit has been filed in 1998 and thereafter, the petitioner has been trying to deny the fruits of decree to the respondents by filing such frivolous petitions and even a suit. The instant title suit filed in 2020 is another step towards that end. Learned senior counsel submits that no interference is required in the impugned order under Article 227 of the Constitution.

7. I have given by thoughtful consideration to the rival submission of the parties. Perusal of impugned order shows each and every issues raised by the petitioner has been considered by the learned executing court and this Court in Civil Miscellaneous Case No. 162 of 2024 vide order dated 10.04.2024 has already directed the learned executing court to expedite and dispose of Execution Case No. 06 of 2011 within a period of six months from the date of receipt/production of a copy of the said order. If the issue raised by the petitioner has already been taken care of by different courts in eviction proceeding, on the same ground, the petitioner could not claim stay of the execution proceeding. Even the claim of the petitioner about decree being executed over and above the area of sale deed, the right forum for agitating the same was the court which decreed the eviction suit and appellates court which



affirmed the decree and not to raise this matter before the executing court or before this Court in a proceeding under Article 227 of the Constitution. Moreover, the impugned order is a speaking order passed after consideration of all submission of the petitioner and this Court under Article 227 of the Constitution would not like to interfere in such order of learned executing court.

8. In the light of the discussion made hereinbefore, I find no infirmity in the impugned order and the same is affirmed. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.03.2025
Transmission Date	NA

