

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.243 of 2024**

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1. Nawal Kishore Bhagat Son of Late Asharfi Bhagat Resident of Gamhariya Bazar P.S. Gamhariya District-Madhepura.
2. Uday Kumar Bhagat @ Uday Shankar Choudhary Rameshwar Choudhary Resident of Village and P.S.-Mansurchak, District-Begusarai.

... .. Petitioner/s

Versus

1. Ratan Kumar Bhagat Son of Late Sachchidanand Bhagat Resident of Village-P.S. Simari Bakhtiyarpur District-Saharsa.
2. Anil Kumar Bhagat Son of Late Atmanand Prasad Resident of Village-P.S. Simari Bakhtiyarpur District-Saharsa.
3. Birendra Kumar Bhagat Son of Late Atmanand Prasad Resident of Village-P.S. Simari Bakhtiyarpur District-Saharsa.
4. Surendra Kumar Bhagat Son of Late Atmanand Prasad Resident of Village-P.S. Simari Bakhtiyarpur District-Saharsa.
5. Devendra Kumar Bhagat Son of Late Atmanand Prasad Resident of Village-P.S. Simari Bakhtiyarpur District-Saharsa.
6. Sunil Kumar Bhagat Son of Late Atmanand Prasad Resident of Village-P.S. Simari Bakhtiyarpur District-Saharsa.
7. Sanjay Kumar Bhagat Son of Late Atmanand Prasad Resident of Village-P.S. Simari Bakhtiyarpur District-Saharsa.
8. Prashant Kumar Bhagat @ Mithu Son of Late Ravindra Kumar Bhagat. Resident of Village-P.S. Simari Bakhtiyarpur District-Saharsa.
9. Pinki Devi D/o Late Ravindra Kumar Bhagat Resident of Village-P.S. Simari Bakhtiyarpur District-Saharsa.
10. Rinki Devi D/o Ravindra Kuamr Bhagat Resident of Village-P.S. Simari Bakhtiyarpur District-Saharsa.
11. Smt. Manorama Devi D/o Late Atmanand Prasad, W/o Rajaram Bhagat Resident of Virat Nagar, Tripti Restaurant, New Road, Kathmandu, Nepal.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Surendra Kishore Tiwary, Advocate  
For the Respondent/s : Mr.Harendra Kumar Tiwary, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**CAV JUDGMENT**

**Date : 06-08-2025**

The instant civil miscellaneous petition stands  
directed against the order dated 22.12.2023 passed by learned



Munsif, Simri Bakhtiyarpur, Saharsa in Title Execution Case No. 02 of 2001 whereby and whereunder the learned trial court rejected the application of the petitioners filed under Order XXI Rule 97, 100, 104 and Section 151 of the Code of Civil Procedure (in short “the Code”).

2. Shorn of unnecessary details, facts of the case are that one Sachchidanand Bhagat who was maternal grandfather of the petitioners, filed a Title Eviction Suit No. 30 of 1987 against defendant Atmanand Prasad whose heirs/legal representatives are respondent nos. 2-11 in the present case. The Title Eviction Suit No. 30 of 1987 was decreed on 22.09.1989 and being aggrieved by the said judgment and decree, defendant Atmanand Prasad filed Title Appeal No. 17 of 1989 which was also dismissed vide judgment and order dated 07.04.1999. Second Appeal No. 255 of 1999 filed by Atmanand Prasad also came to be dismissed and SLP (Civil) CC 1358-1359/2008 before the Hon’ble Supreme Court was also dismissed. Thereafter, the present Title Execution Case No. 02 of 2001 has been filed. The petitioners claim that Sachchidanand Bhagat had two wives, Jiya Devi and Sudama Devi. Jiya Devi had two daughters, Urmila and Kaushalya, and the petitioner nos. 1 and 2 are the respective sons of the two daughters. From the 2<sup>nd</sup>



marriage of Sachchidanand Bhagat with Sudama Devi, birth of a son, respondent no. 1, Ratan Kumar Bhagat and a daughter Mangali Devi took place. After death of Sachchidanad Bhagat, decree holder of Title Eviction Suit No. 30 of 1987, respondent 1<sup>st</sup> party, Ratan Kumar Bhagat filed Execution Case No. 02 of 2001 in which neither the petitioners nor Mangali Devi were made parties. It is also claimed by the petitioners that there had been a partition between the heirs of 1<sup>st</sup> wife and the 2<sup>nd</sup> wife of Sachchidanand Bhagat and accordingly the disputed land under Mauza Bakhtiyarpur, Old Khata No. 1, Old Plot No. 1973, New Khata No. 1245, New Plot No. 2252 measuring in area 3 decimal including pucca house and mud built house and area measuring 1.5 decimal from northern side was allocated in share of these petitioners and the petitioners are in possession of the same. The petitioners further claim that the decree holder and judgment debtor, in collusion with each other, have not made the petitioners parties with intention of usurping the right of the petitioners. Thus, the petitioners filed an application dated 27.07.2022 under Order XXI Rule- 97, 100, 104 read with Section 151 of the Code before the learned Executing Court praying therein that right, title and possession of the petitioners be decided first as by family partition they are in possession



over the suit land and they have not been made parties. A rejoinder was filed by the respondent 1<sup>st</sup> party on 26.08.2022 stating therein that the petitioners have filed the application in order to deny decree holders the fruits of decree. The learned Executing Court vide order dated 22.12.2023 dismissed the application of the petitioners dated 27.07.2022 *in limine*. The said order is under challenge before this Court.

3. Learned counsel for the petitioners submitted that the impugned order is improper and illegal as any application filed under Order XXI Rule- 97 of the Code by a person in possession of the decretal property is to be disposed of after registration of miscellaneous case under Rule 459 of the Civil Courts Rules of High Court of Judicature at Patna and the claims of the petitioners are required to be decided by the Executing Court by following the procedure of a suit in terms of Section 141 of the Code. The learned counsel further submitted that since the petitioners are in possession of half of the suit property, if they object to the execution of the decree holder/respondent 1<sup>st</sup> party and have filed the petition under Order XXI Rule- 97, 100, 104 read with Section 151 of the Code, their objection is to be disposed of following the procedure provided under the aforesaid provisions and could not



have been rejected *in limine*. Learned counsel further submitted that Order XXI Rule 101 provides that even if the application is filed under Order XXI Rule 97, every question relating to the objection of the parties is to be decided in the same proceeding and no separate suit will be entertained. However the learned trial court committed an error observing that petitioners are claiming shares in the decretal property and they have to file a separate suit. Learned counsel further submitted that it is the specific case of the petitioners that they are the heirs of Sachchidanand Bhagat and are having possession over an area of 1.5 decimal upon which the decree has to be executed and if the decree is executed and delivery of possession is given to the decree holder, the right and possession of the petitioners would be affected. Even if there is challenge to the relationship of the petitioners with Sachchidanand Bhagat and whether they are entitled to share in the decretal property, the same is to be decided by the same Court by instituting a miscellaneous case and the Court could not have rejected the claim of the petitioners *in limine*. Learned counsel referred to the execution petition of the petitioners submitting that it would be apparent from the said petition that out of total area of 3 decimal in family partition, from the northern side 1.5 decimal was



allocated in the share of these petitioners having their house and their possession over the said portion. Therefore, execution proceeding against the said area would affect the right, title and possession of the petitioners which need to be adjudicated by the Executing Court. The learned trial court has wrongly held that the petitioners are claiming share, whereas they are seeking protection of their possession of the property they got in partition.

4. Learned counsel further submitted that for the purpose of the execution proceeding the petitioners are strangers/third parties who are in possession and therefore they have right to protect their possession. The Hon'ble Supreme Court in the case of *Shamsher Singh Vs. Lt Col Nahar Singh* reported in **(2019) 17 SCC 279** held that under Order XXI Rule 101 all the questions including the questions relating to right, title and interest in the property has to be determined on the application filed under Order XXI Rule 97 or Rule 99 by the Executing Court.

Learned counsel next referred to the decision of the Court in *Jini Dhanrajgir Vs. Shibu Mathew* reported in **(2023) 20 SCC 76**, wherein the Hon'ble Supreme Court, considering the scheme of Order XXI Rule 97 to 106 quoted with approval



the finding of the Supreme Court in ***Silverline Forum Pvt. Ltd. Vs. Rajiv Trust & Anr. (1998) 3 SCC 723***, wherein it has been held that the provision under Order XXI Rule 97-106 were intended to deal with every sort of resistance or obstruction raised by any person and that Rule 97(2) made it incumbent upon the Court to adjudicate upon such complaint in accordance with the procedure laid down.

Learned counsel further submitted that the objector need not be in physical possession of the property at the time of execution of the decree. After partition, the petitioners claim the possession though they were physically not present still the property came into their possession and they can be said to be in constructive possession of the property so far as their share is concerned. They have got every right to object to the execution of the decree. The term dispossession was considered by the Hon'ble Supreme Court in the case of ***Ashan Devi & Anr. Vs. Phulwasi Devi and Ors.*** reported in ***(2004) AIR (SC) 511*** and construing the meaning of dispossession the Hon'ble Supreme Court held that merely because objectors were not physically present on the property at the time of execution of decree, it cannot be said that delivery of possession to decree-holders by Court does not amount to objector's legal ouster or



‘dispossession’.

The learned counsel further submitted that in the same case, relying upon ***Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal & Anr. [1997 (3) SCC 694]***, the Hon’ble Supreme Court held that a third party resisting or obstructing the execution of the decree can also seek adjudication of his rights under Order XXI Rule 97 in the same way as the Decree Holder. In ***Brahmdeo Chaudhary*** (supra) the Hon’ble Supreme Court held that the Executing Court has to follow the procedure laid down by Order XXI Rule 105 of the Code to deal with the objection filed under Order XXI Rule 97 read with Order XXI Rule 98 of the Code.

Lastly, the learned counsel referred to the case of ***Bhanwar Lal Vs. Satyanarain*** reported in ***(1995) 1 SCC 6*** wherein the Hon’ble Supreme Court held that a reading of Order XXI Rule 97 CPC clearly envisages that “any person” even including the judgment-debtor irrespective of whether he claims derivative title from the judgment-debtor and he resists execution of a decree, then the court in addition to the power under R.35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. Thus, learned counsel





submitted that the impugned order is not sustainable and the same be set aside.

5. Learned counsel appearing on behalf of the respondent no. 1 vehemently contended that there is no merit in the present civil miscellaneous petition and the same be dismissed. Learned counsel submitted that there is no infirmity or illegality in the impugned order and therefore this Court in its supervisory jurisdiction under Article 277 of the Constitution of India need not interfere with the said order. Learned counsel further submitted that Eviction Suit No. 30 of 1987 was allowed in favour of plaintiff, Sachchidanand Bhagat vide Judgment dated 22.09.1989 and Decree dated 06.11.1989. Title Appeal No. 17 of 1989 by original defendant, Atmanand Prasad was dismissed on 07.04.1999. Second Appeal No. 255 of 1999 was filed by the son of Atmanand Prasad against the answering respondent i.e., Ratan Kumar Bhagat and the Second Appeal was dismissed by this Court on 05.04.2007. Civil Review No. 83 of 2007 filed by Anil Kumar Bhagat, respondent no. 2 against Ratan Kumar Bhagat, respondent no. 1 was dismissed on 13.09.2005 by this Court. SLP (Civil) CC 1358-1359/2008, (Anil Kumar Bhagat Vs. Ratan Kumar Bhagat) was also dismissed on 04.02.2008 by the Hon'ble Supreme Court of



India. The chronology of the aforesaid events show that since 1987 till 2008 these petitioners were not in picture. These petitioners are imposters and are not family members of original plaintiff Sachchidanand Bhagat and even the original defendant who was own brother of original plaintiff in his petition dated 02.12.1994 filed in Title Appeal No. 17 of 1989 had stated that only Ratan Kumar Bhagat and his mother Sudama Devi were legal heirs of Sachchidanand Bhagat. The present petition has been filed with wrong averments. The copy of ration card annexed for Mossamat Urmila Devi shows husband/father Sastanand Bhagat and not Sachchidanand Bhagat. Further, Second Appeal No. 255 of 1999 has been filed by Anil Kumar Bhagat and not by Atmanand Prasad.

Learned counsel further submitted that a false claim is being set up by the petitioners that they are in possession of 1.5 decimal land of the decretal property however it is apparent that the said three decimal land is in possession of Anil Kumar Bhagat/judgment debtor for which Execution Case No. 02 of 2001 is still pending. When the delivery of possession is yet to be handed to the decree holders, there is no question of possession by these petitioners. If the petitioners are not in possession, they have no right to maintain an application under



Order XXI Rule 97-104 of the Code. In fact the petitioners are being played by the persons having vested interest in order to somehow delay the conclusion of execution proceeding. Earlier the petitioners have failed to prove their *prima facie* case, possession or any cause of action. There is no resistance or obstruction by the petitioners and therefore there is no occasion for the petitioners to file any application under Order XXI Rule 97-104 and the learned trial court has rightly rejected the application of the petitioners. Learned counsel further submits that Urmila Devi and Uday Kumar Bhagat filed an application on 01.12.2018 under Order I Rule 10(2) of the Code and Order 22 Rule 5 read with Section 151 of the Code which was dismissed as it was not pressed by the objectors/intervenors. Thereafter another application was filed by the mother of the petitioner no. 1 Urmila Devi on 06.07.2019 to which rejoinder was filed on 19.08.2019, but the said application to the similar effect was dismissed as not pressed.

6. Learned counsel relying on the decision of the Supreme Court in the case of ***Sriram Housing Finance and Investment India Ltd. Vs. Omesh Mishra Memorial Charitable Trust***, reported in ***(2022) 15 SCC 176*** submitted that since the petitioners were neither in possession nor they were in



dispossession, they have no right to maintain any objection petition under Order XXI Rule 97-104 of the Code and for this reason, the authorities cited by the petitioners being distinguishable on the facts could not be applied in the present scenario. Thus, the learned counsel reiterated that there is no infirmity in the impugned order and the same needs to be sustained by this Court.

7. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

8. Order XXI Rule 97, 100 and 104 of the Code reads as under:-

***97. Resistance or obstruction to possession of immovable property.***

*(1)Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.*

*(2)Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.*

***100. Order to be passed upon application complaining of dispossession.***

*Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,-*  
***(a)****make an order allowing the application*



*and directing that the applicant be put into the possession of the property or dismissing the application; or*

*(b)pass such other order as, in the circumstances of the case, it may deem fit.*

***104. Order under rule 101 or rule 103 to be subject to the result or pending suit.***

*Every order made under rule 101 or rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property.*

Hon'ble Supreme Court in the case of ***Brahmdeo Chaudhary*** (supra) has held that the third party resisting or obstructing the adjudication of a decree can also seek adjudication of the rights under Order XXI Rule 97 in the same way as decree holder.

Similarly, in ***Ashan Devi*** (supra), the Hon'ble Supreme Court after considering a number of decisions, came to the conclusion that provisions of XXI Rule 97 and 99 have been widely and liberally construed to enable the executing court to adjudicate the *inter se* claims of the decree holder and the third parties in the executing proceedings themselves to avoid prolongation of litigation by driving parties to file independent suits. The Court further observed that the case of ***Brahmdeo***



*Chaudhary* (supra) was relied by the Supreme Court in the case of *Silverline Forum Pvt. Ltd.* (supra) wherein it was held that remedy under Order XXI Rule 99 in execution is available to a party only on dispossession but a third party who is resisting or obstructing can also seek adjudication of his claims and rights by making application under Order XXI Rule 97 of the Code. Therefore there is no dispute over the fact that a stranger/third party can maintain a petition under Order XXI Rule 97 of the Code.

9. Coming to the facts of the case, the claim of the petitioners is on the ground that they are the heirs of the original plaintiff in whose favour the decree was issued by the learned trial court and they have got the property in question by way of partition to the tune of half share i.e., 1.5 decimal and thus they are claiming possession over the half portion of the decretal property.

10. If the petitioners claim themselves to be the heirs/legal representatives of the original plaintiff/decreed holder, then they cannot be judgment debtors or even stranger to the proceedings.

11. However, their claim has been opposed by the respondent no. 1 that they are not the heirs of the original



plaintiff. On this ground, they are claiming that they are strangers/third party in the execution proceedings and they have right to maintain the application under Order XXI Rule 97. Now to sustain an objection under Order XXI Rule 97, a person needs to be in possession of the property and obstructing the delivery of possession to the decree holder. When the execution proceeding is being carried out only for the purpose of delivering possession of the property to the decree holder there is no question of petitioners being in possession as their whole claim is based on the fact that they are the heirs of Sachchidanand Bhagat, the original plaintiff. If the original plaintiff or even the decree holder for the present were in possession, there was no need to proceed with the execution case. Hence, there is apparent fallacy in the claim of the petitioners. They cannot claim their right as heirs of decree holder and as a stranger at the same time. The chronology of events also makes the claim of the petitioner suspect. From institution of Title Eviction Suit No. 30 of 1987 till disposal of SLP (Civil) CC 1358-1359/2008, undoubtedly, the petitioners were not in picture. If execution proceeding culminates in delivery of possession to the decree holder, the petitioners could claim for partition in the property of Sachchidanand Bhagat



being the self declared heirs of Sachchidanand Bhagat. But in the execution proceedings, they are neither here nor there. Admittedly, the respondent nos. 2-11 who are the legal representatives of original defendant, Atmanand Prasad are in possession against whom the execution proceedings have been taking place. The petitioners unsuccessfully tried to get themselves impleaded in the execution proceedings as it appears from the dismissal of their earlier petitions though not on merits but filing of such petitions shows that the petitioners were clear about status of their possession and even the claim of constructive possession is not to be believed since the judgment debtors, who are tenants in the premises, were never the tenant of the petitioners. The claim of the petitioners of possession of decretal property is completely dependent upon delivery of possession being handed over to the decree holder if their claim of heirship from Sachchidanand Bhagat is taken to be true. Therefore, the petitioners could not maintain any application under Order XXI Rule 97-104. Now, merely filing an objection application under Order XXI Rule 97 does not make it obligatory upon the Executing Court to institute a miscellaneous case as claimed by the learned counsels for the petitioners.

12. In the case of *Silverline Forum Pvt. Ltd.* (supra)





Hon'ble Supreme Court observed as under :-

*.... "It is clear that executing court can decide whether the resistor or obstructor is a person bound by the decree and he refused to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course the Court can direct the parties to adduce evidence for such determination. If the Court deems it necessary."*

Therefore, it is not necessary that on each and every objection petition filed under the heading Order XXI Rule 97-106, a miscellaneous case is to be instituted with all paraphernalia of making a detailed enquiry or recording evidence. It is obvious from the discussion made hereinbefore that unless the objector makes out a *prima facie* case showing his possession or dispossession in respect of the suit property, the executing court is not bound to proceed in the matter at the instance of such person by institution of a miscellaneous case and putting the execution proceeding on back burner.

The proceeding in the present case, which started in the year 1987, has been continuing till date though the decision attained finality after the orders of the Hon'ble Supreme Court



dated 04.02.2008 in SLP (Civil) CC 1358-1359/2008 which shows a sorry state of affair prevailing in the arena of civil litigation that after so many years, the decree holder is still running from pillar to post to avail the fruits of the decree. The observation made by the Hon'ble Supreme Court in the case of ***Jini Dhanrajgir (supra)*** is most apposite and is extracted herein:-

*2. More than a century and a half back, the Privy Council (speaking of The Raj Durbhunga, Under the Court of Wards vs. Maharajah Coomar Ramaput Singh (1871-72) 14 Moo IA 605 lamented that the difficulties of litigants in India indeed begin when they have obtained a decree. A reference to the above observation is also found in the decision of the Oudh Judicial Commissioner's Court in Kuer Jang Bahadur vs. Bank of Upper India Ltd. Lucknow 1925 Oudh 448. It was ruled there that the Courts had to be careful to ensure that the process of the Court and the laws of procedure were not abused by judgment-debtors in such a way as to make the courts of law instrumental in defrauding creditors, who had obtained decrees in accordance with their rights.*

*3. Notwithstanding the enormous lapse of time, we are left awestruck at the observation of the Privy Council which seems to have proved prophetic. The observation still holds true in present times and this case is no different from cases of decree-holders' woes commencing while they are in pursuit of enforcing valid and binding decrees passed by civil courts of competent jurisdiction. The situation is indeed disquieting, viewed from*



*the perspective of the decree- holders, but the law, as it stands, has to be given effect whether the court likes the result or not. In Martin Burn Ltd. vs. Corporation of Calcutta AIR 1966 SC 529, this Court held that a court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.*

13. In the light of discussion made hereinbefore, I find no error of jurisdiction in the impugned order dated 22.12.2023 by the learned Executing Court and hence the same is affirmed.

14. Accordingly, the present petition is dismissed.

15. The Executing Court is directed to proceed in the matter and take it to its logical conclusion in the light of guidelines issued by the Hon’ble Supreme Court in the case of ***Rahul S. Shah Vs. Jinendra Kumar Gandhi & Ors.*** reported in ***(2021) 6 SCC 418.***

**(Arun Kumar Jha, J)**

Anuradha/-

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