

Nuruddin Sk and Anr Vs. Salim Sk and Ors

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Court : Jharkhand

Decided On : Nov-08-2017

Appellant : Nuruddin Sk and Anr

Respondent : Salim Sk and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND, RANCHI S.A. No. 99 of 2014 Nuruddin Sk. & Anr. Appellant(s) Versus Salim Sk. & Ors. . Respondent(s) CORAM: HONBLE MR. JUSTICE ANANT BIJAY SINGH For the Appellant(s) : Mr. Arbind Kr. Sinha, Advocate. Mr. Jitesh Kumar, Advocate For the Respondent(s) : Mr. Gautam Kumar, Advocate ----- 07/08.11.2017. Vide order dated 14.07.2017, a detailed order was passed and the Registrar Vigilance of this Court was directed to personally visit at the place of respondent no.10, namely, Noor Islam, S/o Jhatu Sk., R/o Amanat Diara, P.S.:- Radhanagar, P.O.:- Piyarpur, District :- Sahibganj and submit a report to this Court whether he is alive or not. Thereafter the matter was listed on 04.10.2017 and the report of the Registrar Vigilance was received which was opened in presence of the parties and it appeared that he visited the place of respondent no.10 and accordingly, made inquiry and found respondent no.10 is alive. On perusal of the enquiry report dated 30.08.2016, it appears that the Registrar (Vigilance) of this Court visited the aforesaid place of the respondent no.10 along with Officer in charge, Radhanagar Police Station, A.S.I., Sri Ali Akbar Khan and two police constables proceeded for Amanat Diara, P.O.:- Piyarpur and recorded the statement of Tajkera Khatoon, the member of Ward no.13 of Amanat

Diara. She confirmed that respondent no.10, Noor Islam, S/o Jhatu Sk @ Jhatan Sk, of Village Amanat Diara, P.S. :-Radhanagar, District :- Sahibganj, is alive and living in ward no.13. She further issued a certificate to the extent that there is no other Noor Islam in her ward. Thereafter on request, she called the Noor Islam within 15 minutes. The person who was called by the wife of Noor Islam came and confirmed that he is Noor Islam and his father's name is Late Jhatu @ Jhatan Sk. On request, said Noor Islam shown his voter identity card and Aadhaar card, on the condition that the same will be returned after taking photocopies of the same. Photocopy of the Aadhar card has been annexed along with his photograph. Noor Islam further disclosed that the plaintiffs, Salim Sk. and others had filed a case against him and others, in which he has relinquished his claim by admitting the claim of the plaintiffs. So, he admitted that litigation is going on in between the parties. The statement of Smt. Tajkera Khatoon about existence of Noor Islam and issuance of certificate in this regard and the statement of Noor Islam was also recorded. In the meanwhile, group of about 200 people assembled and they also disclosed that respondent no.10 is alive. The matter was listed on 04.10.2017 and office was directed to serve enquiry report to the counsel and the matter was listed for today. Further under order dated 04.10.2017, the Registrar (Vigilance) of this Court was directed to supply the name of Sr. Civil Judge-I, Sahibganj, who has passed the order dated 26.07.2017 and all subsequent orders. It appears that thereafter the Registrar (Vigilance) submitted a report dated 31.07.2017, which reveals that the order dated 26.07.2017 and all subsequent orders have been passed by Sri Satyapal, Civil Judge (Sr. Division)-I, Sahibganj (Rajmahal). Let the report dated 31.07.2017 also be kept on record. Further, it appears that in the meanwhile the learned Civil Judge (Sr. Division)-I, Sahibganj, in Title Execution Case No.01 of 2013 which was filed on 12.03.2013 and a petition was filed by the decree-holder to depute one Nazir and one Peon and One Pleader Commissioner and also provide a Magistrate and Police force. The prayer was allowed and the matter was adjourned. Thereafter, it appears that the matter was again heard on 18.05.2017 and the prayer was made by the decree-holder that he has already deposited the cost of the Magistrate and the police force, direction be issued to the Superintendent of the Police and the S.D.M. Thereafter, it appears that the matter was again listed on 25.05.2017 and 08.06.2017 and on 08.06.2017, the prayer

made by the decree-holder, one Pleader Commissioner, Md. Samiruddin was appointed, one Nazir, one Peon and one 'Dholakia' for which cost of Rs.2276/- was deposited and further Rs.5,975/- was deposited and Rs.1646/- was deposited in the Treasury of S.D.M. to nominate an Executive Magistrate and a writ was directed to be issued. A further prayer was made by the decree-holder that one JCB machine be also deputed to demolish the structure which has been constructed on the land, permission was accorded and the matter was listed on 26.07.2017 and a detail order was passed, stating therein that since there was no order of stay in the Second appeal, and the execution case was pending since long, the order was passed to the petition filed on behalf of the judgment debtor which was dismissed and a further prayer was made by the decree-holder on the report of the Nazir that 10 female forces, two dozen Police force were directed to be deputed as there was resistance from the villagers. It further appears that a direction was issued to deposit the amount and it appears that this Court in the instant Second appeal directed the Registrar (Vigilance) to hold enquiry as to whether the respondent no.10 is alive or not. The Court while taking the petition on record has recorded that since Execution petition is pending since long in T. Execution Case No.01 of 2013 and the instant Second appeal is pending in the High Court. There is no stay order passed in the said Execution case. A letter has been directed to be issued to S.D.M. and also to depute the force, the matter was directed to be listed on 07.08.2017. It appears that on 07.08.2017, a petition was filed on behalf of the decree-holder stating therein that he has deposited the cost of the Police force before the S.P. Office, but no order was passed on the petition filed by the decree-holder to stay the further proceeding as was ordered by this Court and the matter was directed to be listed on 09.08.2017 and a petition was filed on behalf of the decree-holder that an Executive Magistrate be deputed and permission was granted to deposit one day's salary of the Executive Magistrate and the matter was directed to be listed on 11.08.2017 and thereafter the matter was listed on 18.08.2017 and on that day, the decree-holder filed a receipt before the 'Nazir' and finally on 23.08.2017, further order was passed by the learned Executing Court that decree-holder has also deposited Rs.1646 as the cost of the Executive Magistrate and Rs.1192 twice and the cost of the force was deposited as Rs.5975 and Rs.15015/-. So, the Nazir was directed to execute a writ and

submit a report, the matter was listed on 29.08.2017 and 08.09.2017 and finally on 11.09.2017, report of the Nazir was received which shows that the decree has been executed and after execution of the decree, writ has been returned. Decree has been satisfied and execution has been completed and record was consigned to record room. Further, office note dated 07.11.2017 reveals that the appellants have filed one I.A. No.7934 of 2017 under Section 144 read with Section 151 of C.P.C. whereby the entire order-sheets of Title Execution Case No.1 of 2013 has been brought on record and further counter-affidavit to the aforesaid petition has been filed on behalf of the respondent nos.1 to 9 and further I.A. No.675 of 2017 under Order XLI, Rule 5 of Code of Civil Procedure, 1908 for stay has been filed in T. Execution Case No.1 of 2013. Before passing orders on the interlocutory application, fresh notice upon respondent no.10, in view of the report of Registrar (Vigilance) is to be taken. Counsel for the appellants is directed to take fresh steps of notice upon respondent no.10 in both modes for which, requisites etc., must be filed within two weeks. Let a copy of the order along with Photocopies of the service report of the process server, Anil Kumar Raman along with endorsement of the Judge Incharge, Rajmahal along with affidavit duly forwarded to this Court wherein he has stated that respondent no.10 died along with enquiry report of the Registrar (Vigilance) and photocopies of the orders dated 28.06.2017, 14.07.2017, and 04.10.2017 passed by this Court be sent to learned Principal District & Sessions Judge, Sahibganj at once. Learned Principal District & Sessions Judge, Sahibganj, is directed to hold departmental enquiry against the process server and submit a report within 20 weeks from the date of receipt of a copy of this order. The copy of the order be sent through 'Special Messenger' of Hon'ble Court to be sent by Court. Further, copy of the order be sent through 'FAX' and also to the Principal District & Sessions Judge, Sahibganj forthwith. Let a copy of this order along with enquiry report of the Registrar (Vigilance) be placed before the Registrar General with a direction to place before Hon'ble the Acting Chief Justice regarding swiftness shown by the Learned Civil Judge (Sr. Division).-I, Sahibganj (Rajmahal) in T. Execution Case No.1 of 2013 and also against the Judge Incharge, Rajmahal for endorsing the report of the process server so far respondent no.10 is concerned, showing he has died and subsequently he was found to be alive for referring the matter to Hon'ble Standing Committee. The

Registrar General is also directed to place a copy of the order before Hon'ble Zonal Judge, Sahibganj, for his Lordship's kind perusal and direction. (Anant Bijay Singh, J.) Sandeep/

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