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Court : Patna

Decided On : Jun-27-2006

Judge : Navaniti Pd. Singh, J.

Acts : Code of Civil Procedure (CPC) - Sections 148

Appeal No. : Civil Revision No. 2112/05

Appellant : Kapildeo Narayan Singh and ors.

Respondent : Mithilesh Kumar Singh and ors.

Disposition : Application dismissed

Judgement :

Navaniti Pd. Singh, J.

1. Heard.

2. The delay in filing the civil revision application is condoned for the reasons given in the condonation petition (I.A. No. 5513/03).

3. The present revision application is directed against the order dated 21.7.2005 passed by Sub Judge VII. Biharsharif (Nalanda) in Title Suit No. 79 of 1983, by which the trial court has rejected the application of the defendant to rescind the decree and has directed the defendants to execute the sale deed failing which the

Court would execute the sale deed.

4. Heard learned senior counsel appearing for the petitioner in support of the revision application. It is submitted that the trial court had delivered the judgment in the year 1994 and decree for specific performance had been granted. In the judgment it was stated that the same should be executed by the defendant within a period of one month after accepting the balance consideration. It is further submitted that accordingly the balance consideration ought to have been tendered within a period of one month from the judgment and not having been so done the decree had to be rescinded. It is pointed out that the balance consideration was deposited in the trial court on 11.7.2001. Pursuant to permission granted by the trial court on 14.6.2001 the decree could not be granted. Secondly, it is submitted that the trial court could not response itself to execute the sale deed. This is the jurisdiction of the executing court. It was for the plaintiff to file an execution application and such action could only be taken by the executing court. The trial court has usurp jurisdiction not vested in it. The plaintiff-opposite party is represented.

5. Heard.

6. So far as the first ground raised with regard to rescinding of decree is concerned, the same is not acceptable. The petitioner accepts that the judgment and decree being against him, he preferred first appeal which was dismissed. He then preferred second appeal which again stood dismissed. The second appeal was dismissed on 22.3.2001 and soon thereafter an application was filed by the plaintiff to comply with the judgment. The said permission was granted by order dated 14.6.2001. That order was not challenged by the petitioner. Thereafter on 11.7.01 the balance consideration was deposited and the petitioner was noticed to execute the sale deed. It is that objector the objection taken by the petitioner. It could thus be seen that the said delay in depositing the consideration was only because the defendant-petitioner himself has challeged the judgment and decree in appeal. Further in terms of Section 148 CPC the court has power to enlarge the time. The application was filed. The time was enlarged. The consideration was accepted by the trial court. The action cannot be said to be without jurisiction

calling for interference by this Court.

7. So far as the second part of the submission is concerned it merits consideration, inasmuch as the trial court cannot assume jurisdiction of the executing court. The balance consideration having been deposited, if the defendant-petitioner does not execute the sale deed then the proper course was that the plaintiff should have put the decree for execution by instituting an execution proceeding and executing court should execute on failure of the defendant to execute the sale deed. The trial court could not assume the said jurisdiction. I accordingly leave down the judgment of the trial court in this regard only to me for failing to execute the sale deed, as directed the sale deed would be executed in accordance with law. Meaning thereby to put execution of the decree in a duly constituted execution proceeding where it would be open for the petitioners to raise such objection as may be available to him in law.

8. With the above observation this civil revision application is dismissed.

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