

Durga Developers Pvt. Ltd. Vs. Sunil Kumar Tiwary and ors.

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SooperKanoon Citation : sooperkanoon.com/519692

Court : Jharkhand

Decided On : May-08-2009

Reported in : 2009(57)BLJR2169

Judge : D.N. Patel, J.

Acts : Land Acquisition Act; Code of Civil Procedure (CPC) - Order 21, Rules 97 and 99

Appeal No. : W.P. (C) No. 1949 of 2009

Appellant : Durga Developers Pvt. Ltd.

Respondent : Sunil Kumar Tiwary and ors.

Advocate for Def. : Indrajit Sinha, Adv. for respondents 1 and 2

Advocate for Pet/Ap. : V. Shivnath, Sr. Adv.;J.C. to G.P.-I

Judgement :

D.N. Patel, J.

1. The present petition has been preferred by the objector in Execution Case No. 19 of 1992, mainly for the reasons that the present petitioner has preferred an application under Order XXI Rule 97 of the Code of Civil Procedure before the Executing Court, which has been registered as Misc. Case No. 4 of 2008, and

during pendency of this application before the Executing Court, execution proceedings may not be completed between the original plaintiffs and original defendant and, therefore, the present petition has been preferred.

2. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, it appears that originally respondent Nos. 1 and 2 had instituted Title Suit No. 342 of 1986 before the concerned trial court and the same was decreed somewhere in the year, 1992. Thereafter, Execution Case No. 19 of 1992 was instituted by the original plaintiffs/decreed-holders before the Executing Court.

3. It also appears that the present petitioner is claiming right, title and interest upon the suit property on the basis of some registered sale deed dated November 5, 2007, from the predecessor-in-title, who are Abdul Zabbar and others. Thus, after the decree is passed in Title Suit No. 342 of 1986, the registered sale deed has been entered into and, therefore, the application under Order XXI Rule 97 of the Code of Civil Procedure has been preferred by the present petitioner, which is now registered as Misc. Case No. 4 of 2008.

4. One more claim has now been orally registered before this Court by respondent No. 4, the State of Jharkhand, that it has already acquired part of the suit property under the Land Acquisition Act and it is also going to institute similar type of case under Order XXI Rule 97 & 99 of the Code of Civil Procedure in the pending Execution Case No. 19 of 1992.

5. Learned Counsel for respondent Nos. 1 and 2, who are original plaintiffs and now decree-holders, submitted that neither the petitioner can claim the suit property, registered sale deed of the petitioner being subsequent to the decree, passed by the trial court, nor respondent No. 4 can claim the suit property, and, therefore, no prayer may be granted in this writ petition to the objector.

6. Thus, looking to the claims and counter-claims, it appears that Execution Case No. 19 of 1992 is pending before the Executing Court. In an earlier writ petition bearing W.P.(C) No. 2472 of 2008, an order has been passed by this Court dated February 18, 2009 to the effect that the aforesaid Execution Case should be

decided on merits by the Executing Court, as expeditiously as possible and practicable, preferably within three months. It appears that the time table could not be followed because of the objector's application etc., nonetheless, looking to the facts, I hereby direct the Executing Court to decide the Execution Case as well as all such type of miscellaneous applications under Order XXI Rule 97 or under Order XXI Rule 97 & 99 of the Code of Civil Procedure, which has already been preferred by the petitioner and which may be preferred by respondent No. 4, within a period of four months from the date of receipt of a copy of the order, passed by this Court. If respondent No. 4 wants to prefer an application under Order XXI Rule 97 & 99 of the Code of Civil Procedure, looking to the aforesaid time table and unlike their lethargic approach, should be promptly preferred within four weeks and no unnecessary adjournment will be given by the learned trial court. Learned Counsel appearing for both the sides in this writ petition shall offer their full cooperation for disposal of the dispute between the parties.

7. Meanwhile, status quo with regard to the title and possession of the property, in question, shall be maintained by all the parties to this writ petition and no party to this writ petition will create any charge or further encumbrances upon the suit property. No right, title or interest of third party henceforth will be created, either by way of sale, lease, mortgage, gift or otherwise transfer or to further alienation of the suit property. No further construction shall be carried out by any of the parties to this writ petition. I hereby direct the Executing Court to appoint a Commissioner, so that a detailed Panchanama of the suit property may be drawn and reduced in writing along with the coloured photographs, positive copiers will be presented and negatives of the photographs will be preserved accurately.

8. This writ petition is, accordingly, disposed of, in view of the aforesaid directions.