

Etwari Devi and ors. Vs. Lakhan Lal and ors.

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SooperKanoon Citation : sooperkanoon.com/520494

Court : Jharkhand

Decided On : Nov-30-2005

Reported in : [2006(1)JCR347(Jhr)]

Judge : S.J. Mukhopadhaya, A.C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 26, Rule 10(2); [Constitution of India](#) - Article 227

Appeal No. : W.P. (C) No. 6160 of 2005

Appellant : Etwari Devi and ors.

Respondent : Lakhan Lal and ors.

Advocate for Def. : Ajit Kumar, Adv.

Advocate for Pet/Ap. : Dilip Kumar Prasad, Adv.

Disposition : Application dismissed

Judgement :

ORDER

S.J. Mukhopadhaya, A.C.J.

1. This application under Article 227 of the [Constitution of India](#) has been preferred by the petitioners, the judgment debtor/defendants against order dated 4th

October, 2005 (Annexure-7) passed by the Addl. Munsif, Ranchi, in Execution Case No. 17 of 2002 whereby and whereunder the objection filed by him under Order XXVI, Rule 10(2) of the Code of Civil Procedure seeking leave to examine the Pleader Commissioner has been rejected.

2. From the enclosures attached to this writ petition and having heard the submissions made by the counsel for the parties, it appears that the respondents/ plaintiffs preferred a Title Eviction Suit No. 44 of 1987, which was decreed in their favour on 18th April, 2002. This resulted in the filing of the Title Appeal No. 06/48 of 2002 by the defendant petitioners. Thereafter, the appeal preferred by the judgment debtor petitioners having been dismissed, the petitioners preferred a Second Appeal No. 467 of 2004 before this Court. A Bench of this Court by order dated 10th February, 2005 observed that there was no case made out to interfere with the judgment and the decree in question and made certain observations and issued directions, as follows, to serve the interest of justice.

(i) The plaintiff will deposit cost for appointment of the Pleader Commissioner who will go on the spot and will measure and ascertain the area and extent of Holding No. 1676, Ward No. II-B of Ranchi Municipal Corporation at Hindpirhi in presence of parties by giving them prior notice in writing. The Court below will ensure that the notice has been positively served on the parties for that purpose;

(ii) After taking measurement of the said holding the report will be submitted in the Court below and after satisfying itself, the Court below will issue a writ of the delivery of possession on the said ascertained area of Holding No. 1676 in favour of the plaintiffs;

(iii) If the defendants are found within the area of Holding No. 1676 they will be evicted in accordance with the terms of the decree.

(iv) the execution process shall not be delayed on any other new ground.

3. In the meantime, the Execution case No. 17 of 2002 could not proceed because of pendency of the second appeal. After the aforesaid order was passed by this Court, a Pleader Commissioner was appointed who took measurement to

ascertain the area and the extent of holding No. 1676 of ward No. II-B of the Ranchi Municipal Corporation at Hindpiri. The measurement was made in presence of both the parties given them prior notice.

4. The main plea taken by the judgment debtor/petitioners is that they should be allowed to examine the Pleader Commissioner and the prayer should not have been refused by the Court below.

5. Learned Counsel for the petitioners stated that the area actually measured consists of holding Nos. 1675 and 1676 of M.S. plot No. 2126. According to him, the Pleader Commissioner should have also measured holding No. 1675 and should have given the details thereof in his report, which he submitted without looking into the relevant records.

6. I have perused the report (Annexure-5) submitted by the Pleader Commissioner and the order passed by the Court below as contained in Annexure-7.

7. Having heard the counsel for the parties, I find no ground made out to interfere with the order impugned in this application. There being no merit in this application, it is dismissed.