

R.D. No.9/2014
Kumar -Vs- Samindar

ORDER BELOW Exh.32

(Passed on 08.10.2015)

Perused application and say filed by other side. Heard learned counsel for both parties. This application is filed by objector for framing issues to decide petition filed by him U/o 21 Rule 96 of CPC. On perusal of case record, it reveals that the decree holder filed this execution proceeding for execution of a decree for specific performance. The objector appeared in the proceeding and filed claim petition U/o 21 Rule 97 of CPC at Exh. 22. The decree holder and judgment debtor have filed their reply to said claim petition. Learned counsel for objector has submitted that to decide the claim petition of objector it is necessary to frame issues. In support of his contention he placed reliance on the authority in the case of **Shreenath and another Vs. Rajesh and others** reported in **1999 (2) BCJ 124 SC**, in which the Hon'ble Supreme Court has held that -

“By the use of the words 'any person' it includes all persons resisting the delivery of possession, claim right in the property even those not bound by the decree, includes tenants or other persons claiming right on their own including a stranger.”

He also placed reliance on the authority in the case of **Arif Abdul Gani and others Vs. S. Maheshwar Rao and others**,

reported in 2001(1) BCJ 306, in which Hon'ble High Court has held that -

“The claim petitions may have to be disposed of in a comprehensive manner covering the question relating to right, title or interest over the property under execution. The claim petitions so filed under Rule 96 or 99 of Order 21, now may have to be dealt with just as a suit in which the question of title and possession could be gone in to.”

I have gone through the authorities. On perusal of claim petition filed by objector it reveals that he has pleaded that in the year 2009 partition took place between him and JD and the objector received the property as his share which is subject matter of this execution proceeding. He has also pleaded that he is in possession of said property. I am of the view that, as the claim petition needs to be decided as a suit, it is necessary to frame issues. The ratio laid down in the above authorities is applicable to the present proceeding. Considering above facts, the application deserves to be allowed and it is allowed accordingly. Issues be framed to decide the claim petition of objector.

Sd/-

(R.N. Barad)

Civil Judge Senior Division

Nilanga.

Date : 08.10.2015