

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 153 of 2018

Md. Jalil	...	...	Appellant
	Versus		
Gulam Subhani	...	...	Respondent

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant	: Mr. Shadab Eqbal, Advocate
For the Respondent	: Mr. Atanu Banerjee, Advocate

24/15.07.2025

Learned counsel for the appellant has submitted that Eviction Suit No. 10 of 1996 was filed by the original plaintiff who is the respondent in the present case.

2. The suit was filed on 11.07.1996 against Jagdish Bhuiyan who was a tenant; Jagdish Bhuiyan filed a petition seeking leave to contest and ultimately the suit was fixed for hearing on 21.08.1996 and was decreed on 30.08.1996. He submits that total period of one month twenty days was taken for the learned trial court to decree the suit.

3. Thereafter on 01.05.1997 the decree holder, the plaintiff, filed Execution Case which was numbered as Execution Case No. 7 of 1997. The judgment debtor Jagdish Bhuiya filed an objection in the execution case on 09.06.1997 but the objection was not pressed.

4. Thereafter the appellant had filed a petition under Order XXI Rule 97 of the CPC on 21.06.1997 which was numbered as Misc. Case No. 7 of 1997 and in the Miscellaneous Case, the appellant claimed that he has purchased the property by virtue of registered sale deed dated 16.11.1996 executed by the true owner of the property.

5. The learned counsel submits that so far as the original plaintiff is concerned, he is claiming the property by virtue of registered sale deed dated 28.09.1995 with respect to the same suit property and the sale deed was executed by the power of attorney holder of the original owner and the power of attorney is dated 27.05.1993. The learned counsel submits that although the power of attorney as well as sale deed of the plaintiff (respondent) is prior in point of time as compared to the sale deed of the objector (appellant), but the sale deed in favour of the objector was executed by the original owner of the property. It is submitted that

another suit has been filed by the original owner of the property bearing Title Suit No. 37 of 1997 in which the present appellant is plaintiff no. 4. Thus, the original owner of the property and the present appellant have joined together to file Title Suit No. 37 of 1997 seeking a prayer to set aside the various sale deeds executed by power of attorney holder including the sale deed of the decree holder (plaintiff) of the present case.

6. The learned counsel has submitted that Title Suit No. 37 of 1997 has been decided in favour of the present appellant who is the co-plaintiff along with the original owner of the property and the suit has been decided vide judgment dated 30.05.2019 which has been placed on record through the interlocutory application. The appeal against the judgement passed in Title Suit No. 37 of 1997 has also been dismissed in Title Appeal No. 57 of 2019 and the judgement of the title appeal has also been placed on record through interlocutory application and the judgment in the Title Appeal is dated 10.04.2024. The learned counsel submits that the entire basis of the claim of the decree holder (plaintiff) i.e. Sale deed dated 28.09.1995, has been set aside and therefore the decree holder (plaintiff) who has filed the execution case has no right, title and interest over the property involved in this case. Under such circumstances, the objection filed by the impugned judgements cannot be sustained and the objection filed by the appellant before the learned executing court be allowed.

7. The learned counsel for the respondent has submitted that Second Appeal No. 154 of 2024 has been filed against the dismissal of the 1st appeal arising out of Title Suit No. 37 of 1997 in which notices have been issued on the point of limitation but no substantial question of law as such has been framed as the second appeal at present is barred by limitation.

8. The counsel for the respondent has opposed the prayer and has submitted that the second appeal is pending and therefore the suit itself is pending as second appeal is a continuation of suit. However, he does not dispute that in the second appeal, notice has been issued on the point of limitation and consequently no substantial question of law has been framed. However, the learned counsel for the respondent has submitted

that so far as the impugned judgment is concerned, there is no error. He submits that subsequent development of dismissal of title suit no. 37 of 1997 and dismissal of the appeal arising therefore has taken place during the pendency of the present appeal and these facts were not available at the time of passing the impugned judgements.

9. In response, the learned counsel appearing on behalf of the appellant has submitted that since the Second Appeal arising out of Title Suit No. 37 of 1997 has not yet been admitted and no substantial question of law has been framed, therefore the execution cannot proceed as the Title of the decree holder (plaintiff) does not survive anymore and therefore the appellant cannot be evicted in the execution case.

10. However, he has also submitted that there could be another way i.e. the matter be placed after the disposal of Second Appeal No. 154 of 2024 in which the present appellant has already entered appearance and he undertakes to co-operate with the early disposal of the second appeal. He has also submitted that there is already an interim order with regard to stay of further proceeding in the execution case, the same may be extended.

11. This court is of the considered view that aforesaid Title Suit No. 37 of 1997 and the 1st appeal has also been dismissed and Second Appeal No. 154 of 2024 has been filed in which notice in the limitation has been issued and so far the case has not been admitted /substantial question of law has not been framed and considering the totality of the facts and circumstances, this court is of the considered view that the present case should be heard after disposal of Second Appeal No. 154 of 2024 and accordingly the matter is adjourned and is directed to be posted on 22.09.2025.

12. Till, 22.09.2025 interim order dated 09.07.2025 shall continue.

13. Let this order be communicated to the court concerned through 'FAX'.

(Anubha Rawat Choudhary, J.)

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