

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).26580/2010

(From the judgement and order dated 19/05/2010 in CR No. 58/2005
of The HIGH COURT OF JHARKHAND AT RANCHI)

KEWALI DEVI & ORS. Petitioner(s)

VERSUS

SUMATI DEVI & ORS. Respondent(s)

(With prayer for interim relief)

Date: 09/05/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE A.K. PATNAIK

For Petitioner(s) Mr. Anil Kumar,Adv.
Mr. Puneet Taneja,Adv.

For Respondent(s) Mr. Braj Kishore Mishra,Adv.
Ms.Aparna Jha,Adv.
Mr. Abhishek Yadav,Adv.
Mr. Vikram Patralekh,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

In terms of the signed order, this appeal is allowed, the orders of the High Court and the Executing Court are set aside and the execution petition is restored to file with a direction to proceed with the execution as one for enforcement of a decree for permanent injunction. It is open to the respondents who are judgment debtors in such execution to satisfy the court that they are not interfering with the possession of the appellants.

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(O.P. Sharma) (M.S.Negi)
Court Master Court Master
(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4268 OF 2011
(Arising out of SLP(C)No.26580/2010)

KEWALI DEVI & ORS. Petitioner(s)

VERSUS

SUMATI DEVI & ORS. Respondent(s)

O R D E R

Leave granted. Heard.

2. The appellant filed a suit against respondent No.1 Mahabir Dubey (of whom respondents 2 to 8 were the legal heirs), respondent No.9 and respondent No.10 for declaration of title of the suit property, for a declaration that the plaintiffs are in possession thereof and for a permanent injunction restraining the defendants 1 to 4 in the suit from interfering with their possession. The said suit was decreed on 5.5.1989 and was confirmed by the District Judge and the High Court. Thereafter, the appellants filed the Execution Petition alleging interference and the prayer was for "ejecting of Judgment Debtors from the suit property mentioned in Schedule 'A' and for delivery of khas possession to the decree holder". The said Execution Petition was dismissed by order dated 17.5.2005 on the ground that the prayer for ejectment amounted to enforcing a mandatory injunction whereas the decree was only for a permanent injunction and not for ejectment or mandatory injunction. The appellants challenged the order of the Executing Court by filing a revision. The High Court has dismissed the review petition by order dated 19.5.2010 inter alia on the ground that the decree was obtained against four persons (respondent No. 1, Mahabir Dubey, respondent Nos.9 and 10) whereas Execution Petition was filed against ten persons and therefore, the Execution Petition was not maintainable. The said order is under challenge in this appeal by special leave.

3. It is seen that Mahabir Dubey, second defendant in the suit died and respondents 2 to 8, were impleaded in the execution petition as legal representatives of Mahabir

Dubey. Therefore, the assumption of the High Court that the execution petition was filed against different persons is incorrect.

4. We find that the Executing Court has also misdirected itself. Though in column 11 of the execution petition, petitioner sought "ejectment" of the judgment debtors and delivery of khas possession, in a subsequent application dated 17.7.2003 filed in the execution proceedings, the appellants had made it clear that the respondents were interfering with their possession and interfering with their right to cultivate and therefore the execution was filed to enforce the permanent injunction. This explanation has been lost sight of.

5. The learned counsel for the respondents submitted that the appellants are in possession and the respondents have not interfered with the possession.

6. In these circumstances, the order of the executing court and the High Court cannot be sustained. This appeal is therefore allowed, the orders of the High Court and the Executing Court are set aside and the execution petition is restored to file with a direction to proceed with the execution as one for enforcement of a decree for permanent injunction. It is open to the respondents who are judgment debtors in such execution to satisfy the court that they are not interfering with the possession of the appellants.

.....J.
[R.V. RAVEENDRAN]

.....J.
[A.K. PATNAIK]