

C.P. 18
19/3/13

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil writ Jurisdiction)

C.W.J.C. No. _____ of 2012

Saranya Naha Petitioner

Verus

The State of Bihar & others Respondents

Subj- Others matter

INDEX

<u>Sl. No.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	Synopsis of the case	1 to
2.	An application under Article 124 alongwith an affidavit	1 to 16
3.	<u>Annexure-1</u> A Photo copy of the petition dt. 14.6.2011 filed on behalf of the Private Respondent No. 7	17-21
4.	<u>Annexure-2</u> A Certified copy of the order dt. 9.1.2012 passed by the learned Sessions Judge Madhepura	22
5.	<u>Verbal statement</u>	

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.M.J.C.No. _____ of 2013

Surendra NahtaPetitioner,

VERSUS

The State of Bihar & others.....Respondent,

Synopsis of the Case

The petitioner file this writ application for quashing the impugned order dated 01.12.2012 passed by the Learned District and Sessions Judge, Madhepura in connection with Misc. Transfer petition No.12/011 whereby and whereunder the title suit No:7/08 and Execution petition No.1/08 has been transferred to the court of Civil Judge Senior Division II, Madhepura to from the court of Civil Judge Senior Division 2nd Madhepura on the basis of the petition filed by the plaintiff/Private Respondent No:7 and others under Section 24 of the C.O.A.

14.12.2011
Amesbury-1

☛ The Private Respondent No.7 namely **Shri** **Madhu** **Reddy** **Reddy** has filed a **Writ** **Petition** case No.12/11 Under Section 24 of the **C.P.C.** in the court of **Learned** **District** **and** **Session** **Judge**, **Madhapur** with a prayer for **Transfer** of the **title** **suit** No.7/08 and **Execution** **Case** No.1/08 from the court of **Civil** **Judge** **Senior** **Division** **IIIrd** **Madhapur** by which the **petition** has been filed on behalf of the private Respondent No.7 on 14.12.2011 with **affidavit**.

14.12.2011
Amesbury-2

The **Learned** **Session** **Judge**, **Madhapur** has been pleased to **pass** an **order** in **connection** with **Writ** **Petition** **Case** No.12/11 and **transfer** the **title** **suit** No. 7/08 and **execution** **case** No.1/08 from the court of **Civil** **Judge** **Senior** **Division** **Ist** **Madhapur** to in the court of **Civil** **Judge** **Senior** **Division** **IIIrd** **Madhapur** on 14.12.2011.

Hence this writ application.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

W.P. No. _____ of 2013

In the matter of an application

Under Article 226 of the Indian

Constitution

and

In the matter of

Sugendra Natha Son of Late Anandi Natha, Resident of

village-Chilga Chahi road No(4) 750, Madhepura

District- Madhepura Petitioner

VS

The State of Bihar through the Principal Secretary

Land Revenue Department Government of Bihar, Patna

- 1] The Divisional Commissioner Machi District, Nagpur
- 2] The District Magistrate and Collector, Nagpur
- 3] The Sub-Divisional Officer, Nandikur, Nagpur
- 4] The D.C., N. Nagpur
- 5] The Circle Officer, Machi Purnai Distt. Nagpur
- 6] Shri. N. N. N. Son of late Shri. N. N. N. Resident of village - G. N. N., P. N. N., District - Nagpur..... [.....Independent]

7]

The Hon'ble Mr. Justice N. N. N., the Chief Justice of the High Court of Judicature at Nagpur and her companion Justices of the said Hon'ble court

The Public petition on behalf of the petitioner named above

That the petitioner of this case file this writ application for grant of the following relief:-

(1) For issuance of writ/writs, orders, etc.

direction/direction in the nature of Contempt
for quashing the impugned order dated 9/11/2012
passed by the learned District and Sessions
Judge Nathapara (vide Annexure-2) passed in
connection with HMD Transfer petition No. 12/2011
whereby and whereunder the title suit No. 7/08
and execution petition No. 1/08 has been trans-
ferred to the court of Civil Judge Senior
Division III at Nathapara to from the court of
Civil Judge Senior Division. It Nathapara on the
basis of the petition filed by the plaintiff
namely Bhanu Natha and others under section
14 of the C.P.C.

(11) For further prayed that may kindly stay the
impugned order dated 9/11/2012 passed by the
learned District and Sessions Judge, Nathapara in

Connection with Miscellaneous Transfer petition No.12/2011 by ^{which} with the transfer petition had been filed on behalf of the ^{Respondent No. 7} judgment-debtor/Opposite parties who is the plaintiff in original Title Suit No.7/08 accordingly on the basis of the aforesaid petition the learned Sessions Judge, Raichur has been pleased to transfer the case in the court of Civil Judge Senior Division No. III at Raichur while the aforesaid case was kept pending in the court of Civil Judge Senior Division at Raichur

(iii) For further prayer of the petitioner to set aside the impugned order dated 9.1.2012 and return back the Miscellaneous Transfer petition No.12/2011 as well as title suit No.7/08 in the court of learned Civil Judge Senior Division at Raichur

- (iv) For further needed and proper action
- (v) For further any other relief/reliefs

order/Orders, direction/directions in the nature
of certiorari may seem fit and proper in the
facts and circumstances of this case.

That the petitioner is citizen of India and
ordinary resident of district Nagpur within the territorial
jurisdiction of this Hon'ble court.

That this need questions of law besides other
aspects consideration of this Hon'ble court.

(1) Whether the private Respondent No.7 has been
filed a Misc. Petition Case No.12/011 under
Section 24 of the C.P.C. with a prayer for trans-
fer of record of T.S.No.7/08 and Execution Case
No.1/08 before the Learned Session Judge, Nagpur
and has been made prayer that the case record of
Title suit No.7/08 and execution Case No.1/08 may
kindly transfer the case of Civil Judge Senior
Division etc and the petitioner was appeared

In Case No. 12/011 filed by the Private
Respondent No. 7 and after hearing both the
parties both the above mentioned 2 case numbers
were call for and the case was coming from final
hearing but due to mistake of date the petitioner
could not appear before the court and after
hearing the order was passed as a In-party hearing
without giving any opportunity to the petitioner
to set aside the order before the learned
court. As such the action of the respondents are
not illegal ?

(ii) Whether the Opposite Parties obtain the
order on 12/011 after consulting the real facts
and keeping the court in dark the real facts was
not brought by the Private Respondent No. 7 before
the learned District and Session Judge, Madhavpur
due to which the learned Session Judge Madhavpur

has committed the serious error in the impugned order dated 9.1.2012 as that to transfer the case in both the records from the court of Civil Judge Senior Division Ist Mathapara to the court of Civil Judge Senior Division II Ist Mathapara which is a not illegal ?

(11) Whether the order impugned dated 9.1.2012

it appears that the Private Respondent No. 7 after misreading the statement and suppress the real facts before the Learned Session Judge, Mathapara in his transfer petition case No. 12/011 as such the order impugned it is not fit to be set aside?

4. That the start fact of the case is the Private Respondent No. 7 namely Bhendra Netha had filed a Writ Petition case No. 11/011 under Section 24 of the C.P.C. in the court of Learned District and Session Judge, Mathapara with a prayer for transfer of the title suit

-2-

No.7/08 and Execution case No.1/08 from the court of
Civil Judge Senior Division Ist Madhavara to the court
of Civil Judge Senior Division IInd Madhavara by which
the petition has been filed on behalf of the Private
Respondent No.7 on 16.8.2011 with affidavit

A Photo copy of the petition dated
16.8.2011 file on behalf of the
Private Respondent No.7 is annexed
herewith and marked as annexure-1
to this petition.

¶ That so far the title suit No.7/08 was
filed by the Private Respondent No.7 in which the
petitioner was defendant in title suit No.8 for the
Plaintiff who is the Private Respondent No.7 and had
been made prayer to grant temporary injunction against
the defendant Ist party (Petitioner) who may be re-
-strained from alienating, mortgaging and selling or

disposing of any portion of said land alongwith the
running business detailed at Schedule No.2 to the plaintiff
and further prayed to till the disposal of the suit and
further the defendant 1st and 2nd (Petitioner) be directed
to give 1/3 share in the rental amount of the
building which are on rent as defendant 1st party No.1
and 2 are not giving 1/3 share of the rent collected
from the tenants and also make prayer to direct the
defendant No.1 and 2 so that to deposit the same in the
court till the disposal of the suit.

That thereafter the plaintiff/Private
Party Respondent No.7 who could not succeed in the above
said title suit No.7/08 accordingly the present petition
being the defendant No.1 and 2 had filed another
case No.1/08 Under Order II Rule 16 of the Code of
Civil Procedure read with V/D 18 of the Arbitration
and Conciliation Act 1996 and in execution case

the application had been made by the petitioner for
creation and indorsement of the arbitral award dated
9.11.2008 and 20.1.2008 and on 21.01.2008 the petitioner
and the Private Respondent No.7 herein appointed the
persons as arbitrators to settle of dispute in between
them in respect of agricultural and non agricultural
properties situated within the district of Nagchaura
and Sully circle in schedule No.1 of the aforesaid
application.

7. That the petitioner appeared in the Misc
Case No.12/11 before this learned court and after
hearing both the parties both the above mentioned
records were called for and the case was coming for
final hearing but due to mistake of date petitioner
could not appear before the court and after hearing
Private Party No.7 order was passed Ex-Parte without
giving opportunity to the petitioner to place real facts

all

before the court;

That the Private Party No. 7 has obtained the order cancelling the real facts and keeping the court in very low

That earlier trial of both the cases T.S. No. 7/08 and execution 1/2008 were going on the court of learned Civil Judge Senior Division Ist where execution 1/08 was dismissed off against which petitioner has filed review petition and in the meantime the learned Civil Judge, Senior Division Ist was posted as Civil Judge Senior Division No. II and T.S. No. 7/08 was also transferred in his court for which the petitioner filed Writ Petition No. 19/2011 v/s 24 of the G.P.C. before this learned court on 28.7.2011 and the learned court was pleased to order to transfer the record of T.S. No. 7/08 from the court of Civil Judge Senior Division No. II to Civil Judge Senior Division

17. That where review petition in execution No. 1/08 was pending;

18. That the Private Respondent No. 7 filed Miscellaneous Petition No. 12/11 U/S 24 of the Cr.P.C. for transfer both the above records in the court of Civil Judge Senior Division No. III taking plea that since the order in execution 1/08 has been passed by review petition will be heard by himself the records should be transferred to the court of Civil Judge Senior Division No. III.

19. That the petitioner appeared in Miscellaneous Case No. 12/11 and the learned court after hearing both the parties called for both the above records and after further hearing record was posted for order but in the mean time the learned P.O was transferred and on 1.2.2011 the Private Respondent No. 7 was heard and order was passed ex parte without giving opportunity to the petitioner to place real facts.

12. That the order passed on 9.1.2011 is based on the concealment of facts by the Private Respondent No.7 and company also.

13. That the petitioner could not get opportunity to place real facts before the court which were concealed by the Private Respondent No.7 and order was passed.

14. That the Learned Sessions Judge, Madhupura has been pleased to pass an order in connection with Misc. Petition case No.12/11 and transfer the Title Suit No.7/08 and Execution case No.1/08 from the court of Civil Judge Senior Division Ist Madhupura to in the court of Civil Judge Senior Division No.11st Madhupura on 9.1.2012.

A Certified copy of the order dated 9.1.2012 passed by the Learned Sessions Judge, Madhupura is posted

as enclosed to this petition.

15. That there is no alternative and efficacious remedy the petitioner save and except to file this writ application before this Hon'ble court.

16. That the petitioner has earlier not moved for grant of any writ application before this Hon'ble court in the present impugned order in the instant case.

It is, therefore, prayed that your Lordships may graciously be pleased to admit this writ application issue this WMI calling upon the respondents as to why the writ petition may not allowed to the petitioner.

and

Further It is further prayed that during the pendency of this writ petition

all

~~unpublished in the petition~~

may kindly stay the judgment order dated

9.1.1982 till the disposal of this writ

petition.

and/or

pass such other order or orders as

your Lordship may deem fit and proper

and for this the petitioner shall ever pray

AFFIDAVIT

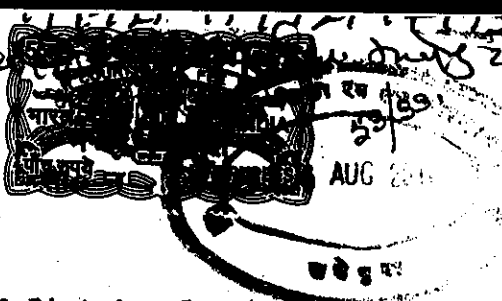
1) **Sarendra Natha; Age about 42 Years; Son of Late Agwari Natha, Resident of village-Chilga Chok road No. 4 P. O.- Madhupur, District-Madhupur. do hereby solemnly affirm and declare as follows:-**

1. **That I am petitioner in this case and as an well well acquainted with the facts and circumstan-ces of the case;**

2. **That the contents of this petition have been read by me which I fully understood the same;**

3. **That the statement made in paragraph No. 4, 5 Age true to my knowledge and those made in paragraphs Nos. 5 to 13, 15, 16 are true to my information and belief and sent are by way of submission.**

4. **That the annexures are true copy of their original.**



Handwritten numbers: 17, 12, and 17.

In,
The Court of District Judge,
Madhepura

304
3/12/11

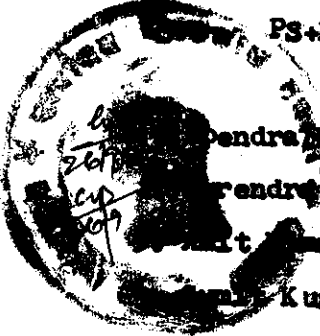
Misc. Transfer Petition No. 12 / 2011

Yogendra Mehta S/o Late Atwari Mehta
R/o Village: Ganeshpur PS: Puraini Bazar
District - Madhepura

Present Address : Madhepura Ward No. 4

PS+Distt: Madhepura - - - - - Petitioner

Versus



Upendra Mehta
Surenra Mehta
Anshu Kumar

Both sons of Late Atwari Mehta
Minor Sons of Upendra Mehta
Through father and Natural Guardian
Upendra Mehta.

Anshu Raj minor son of Surendra Mehta
Through father and Natural Guardian
Surendra Mehta

All R/o Village: Ganeshpur PS: Puraini
Bazar District - Madhepura
Present Address - Madhepura Ward No. 4

PS+Distt: Madhepura - - - - - O.P.S.

The humble Petition on behalf of
Petitioner U/S 24 of the C.P.C.
for transfer of the T.S. No. 07/08 and Execution Case No. 101/08
from the court of Civil Judge,
Senior Division Ist, Madhepura

6
GOVT. OF BIHAR
REGISTRATION, EJECT & PROTECTION DEPT.
MADHEPURA SCORE, MADHEPURA
COURT FEE
Authorization No. 2037

2
a

भारत
STAMP DUTY
00000
RS. 000006
17.1.2013
INDIA
874150
BIHAR
JUDICIAL
9150 7621569

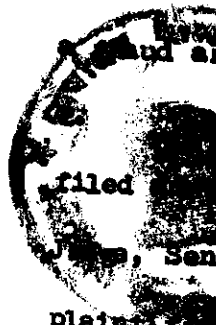


2

18

to the Court of Civil Judge Senior Division IIIrd, Madhepura most respectfully sheweth :-

1st That, the petitioner has filed a T.S.No^o 7/08 before Civil Judge Ist and in that T.S. Suit notices have been served with the defendants and after obtaining summon they along with the Petitioner referred the matter to certain appointed punches by them and accordingly a Panchayati was held but during the period the O.Pa^s the defendants some how or the others managed some of the members of the Panchayati and succeeded in obtaining a biased and fraudulent decision in their favour.



That, after obtaining the said panchnama the O.Pa^s filed an execution case numbered as 01/2008 before the Civil Judge, Senior Division Ist, Madhepura and in the said proceeding plaintiff appeared and filed a detailed rejoinder and thereby they challenged the maintainability of said Execution petition and its proceedings.

2

3rd That, the matter was heard at a length by the then Civil Judge, Senior Division Ist, Sri B.P.Singh and after hearing learned the then Civil Judge, Senior Division Ist passed order on 20.12.10 and thereby he rejected the execution petition of the O.Pa^s observing that the execution petition was not maintainable in the eye of law. Photo copy of the C.C. of the order dated 20.12.10 is being attached as annexure-I of this petition.

16 AUG 2008

10

4th That, after said order the ~~order~~ did not preferred any revision rather filed a review petition and thereby prayed to review the order dated 20th 12th 10 passed in connection of Execution Case No^s 01/2008^s

5th That, though the said review petition should have been treated as miscellaneous petition but the learned court wrongly taking a view registered the said review petition in the record of Execution Case No^s 01/2008^s. However after getting knowledge petitioner appeared in the said proceedings

6th That, the petitioner respectfully submits that Sri B.P. Singh is present Civil Judge IIIrd is still civil Judge Senior Division IIIrd at Madhapura Civil Court who had heard the Execution Petition No^s 01/08 and after disposal of the same also passed several orders in T.S. No^s 07/08 while he was civil Judge Senior Division Ist at Madhapura^s

7th That, It is settle principle of law the power to review a prior order is principally the power vested in an officer to review an order passed previously by himself and the intention behind the back of the legislature is that if an error apparent on the face of the record is sought to be pointed out then the officer who had fallen into the alleged error should have an opportunity to reconsider it^s

8th That, since Civil Judge, Senior Division Ist, Madhapura Sri B.P. Singh who is presently Civil Judge, Senior Division IIIrd

✓

had heard the Execution Case No^s 01/08 at length and passed order on 20th12th10 purposed to be reviewed and as such your honour may be pleased for the interest of justice and just decision of the case to transfer the T.S. No^s 07/2008 and Execution Case No^s 01/08 in the court of Sri B.P.Singh Civil Judge, Senior Division IIIrd from the court of Civil Judge, Senior Division Ist, Madhepura^s

Under the fact & circumstance it is therefore Prayed humbly that your honour would be kind enough to transfer the T.S. No^s 07/08 and Execution Case No^s 01/08 to the Court of Civil Judge Senior Division IIIrd, Madhepura from the court of Civil Judge, Senior Division Ist, Madhepura and for this petitioner shall ever prays

Petitioner

[Signature]

Through

Advocate

[Signature]

16.08.11

VERIFICATION

I, Yogendra Mehta, the petitioner do hereby solemnly affirm and declare that the contents of this petition vide para- 1 to 8 are true to the best of my knowledge and belief which I verify today on 16th08th2011 at Civil Court Campus, Madhepura^s

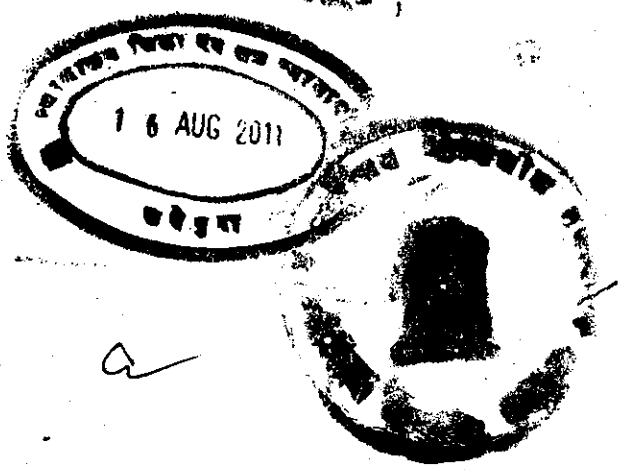
Deponent

[Signature]

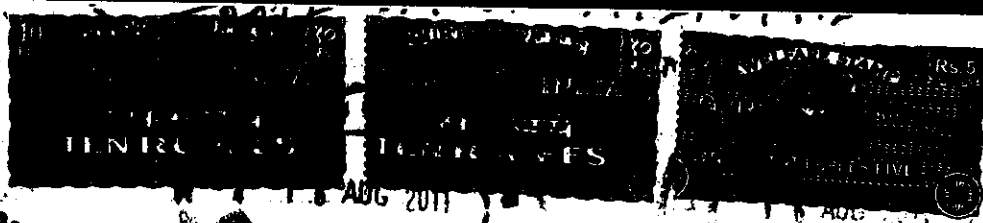
Advocate

[Signature]

16.08.11



[Handwritten mark]



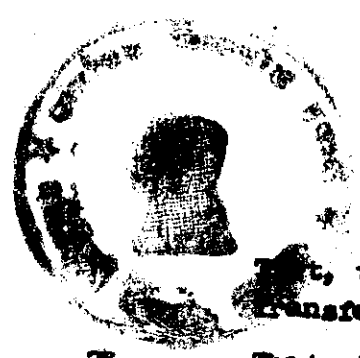
21

In,
The Court of District Judge
Madhepura

Misc Transfer Petition No. 12 / 2011
Yogendra Mehta - - - - - Petitioner
Versus
Upendra Mehta & Others - - - - - O.P.s

AFFIDAVIT

I, Yogendra Mehta aged about 58 Years
S/o Late Atwari Mehta R/o Village:
Ganeshpur PS: Puraini Bazar Distt:
Madhepura present Address - Madhepura
Ward No. 04 PS & Distt: Madhepura do
hereby solemnly affirm and declare as
under :-



1. That, this affidavit is being sworn in support at
transfer petition filed by this petitioner.

2. That, the contents of this affidavit vide para-1 to
8 are true to the best of my knowledge and belief.

3. That, the contents of this affidavit are true to the
best of my knowledge and belief.

Deponent

Yogendra Mehta

Through

Pratibha
Advocate Ad.
16.08.11

साथ कर्ता श्री/श्रीमती Yogendra Mehta
किसका कहवान श्री Pratibha Kaner, Adv.
बधिवरता ने 16.8.11
दिवस 16-08 को शपथ पत्र में लिखि
वासी को साथ को साथ ही दायर
अथ भाव से वेरे सत्य प्रती दिवा।

Pratibha
16/8/11

sworn to be a true copy

COMPARED BY
Pratibha
Concerning Case

Madhepura
16.08.11

