

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.558 of 2015

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1. Shashi Shekhar, son of Late Sachida Nand Prasad
 2. Mostt. Ragani Devi, wife of Late Sachida Nand Prasad
 3. Abhishek Prabhakar, son of Late Sachida Nand Prasad
- All resident of Mohalla – Arya Kumar Road, Machhuatoli, near Power House (West of Magazine House), P.S. – Kadam Kuan, District – Patna.
- Petitioners

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The District Magistrate, Patna
4. Senior Superintendent of Police, Patna.
5. Deputy Superintendent of Police, Patna.
6. Thanadhyaksh Kadamkuan, Police Station, District – Patna.
7. Mostt. Kushum Devi, wife of Late Kamla Prasad (Retd. I.A.S.)
8. Pushpa Devi, D/o – Late Kamla Prasad, wife of late Vijay Kumar Pandit, respondent no. 7 and 8 are resident of F/96 Peoples Cooperative Colony, Kankarbagh, P.O. – Lohia Nagar, P.S. – Kankarbagh, District – Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Pancham Lal Jaiswal, Advocate
For the Respondent/s : Mr. Patanjali Rishi, Advocate, AC to AAG-X

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
ORAL ORDER

2 25-05-2015 The petitioners submit that they were in possession of the house pursuant to a preliminary decree in title partition suit. The defendants in the suit have preferred an appeal. The trial court had awarded the father of the petitioners 1/4th Share in the property in

question. During pendency of the appeal, there being no stay of the preliminary decree, the appellants, who were defendants in the suit, in collusion with the police, have allegedly evicted the petitioners who were plaintiffs.

Having heard learned counsel for the petitioners, in my view, the matter being sub judice at the appellate level in a civil court as between the parties, it would be appropriate for the petitioners to move the appellate court for any protection that he seeks. Writ remedy is not the remedy.

Learned counsel for the petitioners relies on a Division Bench Judgment in a case ***Jagdish Prasad Vs. The State of Bihar and Ors.*** reported in ***1998 (2) PLJR 247*** and a judgment of this court in a case ***Indra Pratap Singh Vs. The State of Bihar and Ors.*** reported in ***2015 (1) BLJ 24 (PHC) 24***. After going through these two judgments and so far as Division Bench judgment is concerned, it lays down no law. It had relegated the petitioners to the district authorities to look into the matter. Moreover that was not the case where a civil litigation in between the parties was pending and the persons who were seeking to evict were appellants and

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the persons being evicted was the respondents. In the second case (Indra Pratap Singh's case) the case was again different. The case was where the decree of eviction was sought to be executed not through the civil court but through the process of police without giving a chance to the judgment debtor to defend in a lawfully constituted eviction proceedings there. Prior to coming in a writ petition even the superintendent of police had tried to intervene to stop the police but they did not stop and this is why the petitioners had to come to the court. Here, the matter being sub judice, the remedy is available to the petitioners to approach the civil court and seek their relief which they want.

This application merits no consideration. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

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