

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.784 of 2014

In
C.R. 252 of 2010

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Maheshwar Thakur

.... Petitioner/s

Versus

Ram Kali Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abinash Kumar

For the Respondent/s : Mr. Shailendra Kumar Verma

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

16 08-12-2015

Heard Mr. Sukumar Sinha, learned Senior Counsel

appearing on behalf of the petitioner and Mr. Shailendra Kumar

Verma , learned counsel appearing on behalf of the respondents.

By the impugned order dated 11.2.2010 passed by Sub Judge-1, Darbhanga in Partition Suit No. 90 of 1961 the court below has rejected the application filed by the petitioner to stay further proceeding in Partition Suit No. 90 of 1961 i.e. final decree proceeding.

It is admitted fact that the aforesaid Partition Suit no. 90 of 1961 has been decreed ex parte in the year 1961 itself. Against the decree no appeal was filed. The present petitioner has filed an application under Order 9, Rule 13 CPC in the year 2008, which was registered as Misc. Case No. 14 of 2008. Pursuant to the preliminary decree, the court below proceeded to prepare final decree. Pleader Commissioner was appointed, who submitted his

report in the court below. In the court below, the present petitioner has already filed an objection to the Pleader Commissioner's report and it is still pending for decision. In the meantime, this application has been filed in the said Partition Suit praying for stay of preparation of final decree. The court below has rejected the said application by the impugned order.

It is settled principle of law that the final decree is also appealable and if at all the court below shall pass any order/decreed against the petitioner, the petitioner may file an appeal before appropriate forum but on this ground because of pendency of Miscellaneous Case, the court below could not stay the proceeding in Partition Suit No. 90 of 1961 and therefore the court below has rightly rejected the application filed by the petitioner.

In the facts and circumstances of the case, I do not find any reason to interfere with the impugned order. Accordingly, this writ application is dismissed.

However, as agreed by both the parties, they may pursue the matter for expeditious disposal of Misc. Case No.14 of 2008 pending before the Court below.

(Mungeshwar Sahoo, J)

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