

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.520 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 4833 of 2012
Along with
Interlocutory Application No.2319 of 2015

- =====
1. Parth Kumar Yadav, S/o Ram Janam Rai, resident of village - Lodipur, P.S. - Doriganj, P.O.- Chirand, District - Saran the Power of Attorney Holder of Smt. Rupa Sinha.
 2. Smt. Ruupa Sinha, W/o Noni Gopal Sinha, presently residing at Yotindra Smiriti, Dham No. 147, Goval Toli Lane, Near Vishalakhi Tola, P.O. – Hugali, West Bengal through her Power of Attorney Holder, namely, Parth Kumar Yadav, S/o - Ram Janam Rai, resident of village- Lodipur, P.S. - Doriganj, P.O. - Chirand, District- Saran.

.... Respondent Nos. 5 & 4- Appellants
Versus

1. The State of Bihar through the Collector, Saran at Chapra.
2. The Collector, Saran at Chapra.
3. The Superintendent of Police, Saran at Chapra.
4. Yadubanshi Rai S/o Dev Sharan Rai,
5. Jitendra Kumar Rai S/o Yadubanshi Rai,
Both resident of village - Pojhi Bujurg, P.S. - Madhorah, District- Saran at present Dahiawan, Pragya Bhawan, Sri Nandan Path, P.S. - Chapra, District- Siwan.
6. Vinod Rai S/o Ramchandra Rai, resident of Mohalla- Telpa, South of Gandhi Chowk, P.S. - Chapra, District- Saran.
7. Raghubansh Prasad Yadav, S/o Dev Sharan Yadav, resident of village- Pojhi Bujurg, P.S.- Madhorah, District - Saran at present Dahiawan, Pragya Bhawan, Sri Nandan Path, P.S. - Chapra, District- Siwan.
8. Vani Brat Ghosh @ Bakai S/o late Shanti Chandra Ghosh, resident of Mohalla- Shiv Bhawan, P.O., P.S. & District- Bhagalpur, at present resident of Sri Nandan Road, P.O. - Chapra, P.S.- Chapra Town, District- Saran.
9. Shukant Kumar Ghosh, S/o Prashant Kumar Ghosh,
10. Enakshi Ghosh, Wife of Preshant Kumar Ghosh,
11. Kumari Akhita Ghosh, D/o Prashant Kumar Ghosh,
All resident of Sri Nandan Road, P.O. - Chapra, P.S. - Chapra Town, District- Saran.

.... Respondents/Respondents 1st Set.

12. Indra Pratap Singh @ Lalji babu S/o late Uday Pratap Narayan Singh @ Bachcha Babu, resident of village- Nevaji Tola, P.S. - Chapra, District- Saran, Presently residing at Mohalla- Dahiawan Chapra Town, Srinandan Path, P.O. & P.S.- Chapra Town, District- Saran.

.... Petitioner-Respondent 2nd Set.

=====

Appearance :

For the Appellant/s : Mr. Binod Kumar Singh, Advocate
Ms. Vagisha Pragma Vacaknavi, Advocate

For the Respondent/s : None

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
And
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 20-06-2016

Re.: Interlocutory Application No.2319 of 2015

The application is for condonation of delay of 28 days in filing of the present appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.520 of 2015

The present Letters Patent Appeal is directed against an order passed by the learned Single Bench of this Court on 07th November, 2014 wherein a direction was issued that if the contesting respondents seek possession of the property, they have to follow the due procedure of law. They have to seek the execution of the decree through the process of the civil Court and the police help cannot be provided to evict the petitioner.

The facts, in brief, are that the petitioner is the purchaser of the property from Dr. Harihar Chandra Ghose. As per the appellants, appellant no.2 is the heir of one of the co-owners, i.e. Shanti Chandra Ghosh and has been handed over the possession of the part of the

disputed property by the heirs of late Shanti Chandra Ghosh. Therefore, the finding recorded by the learned Single Bench that the writ petitioner is in possession and cannot be dispossessed, except in accordance with law, is erroneous.

We have heard learned counsel for the appellants and find no merit in the present appeal. The question as to whether which of the co-owner is in possession requires a finding on the basis of the evidence to be adduced in any appropriate proceedings, but it is equally true that no co-owner can take forcible possession without seeking partition of the property.

Consequently, we do not find any error in the order passed by the learned Single Bench of this Court. However, it is clarified that any observation made in respect of possession of the property will not be taken into consideration in any subsequent proceedings in which the question of possession can be raised and adjudicated upon. Such finding is deemed to be a finding for the purpose of disposal of the writ application only and will not be binding in any properly constituted proceedings either pending or to be filed.

With this observation/direction, the Letters Patent Appeal stands dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	
CAV DATE	N. A.
Uploading Date	
Transmission Date	

