

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1226 of 2016**

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Krishna Singh @ Krishna Pd. Singh

.... Appellant/s

Versus

Parmila Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binay Kumar Ambasta

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**
ORAL ORDER

3 13-12-2016

Heard learned counsel for the petitioner.

Perused the impugned order dated 08.05.2014 passed by Ad-hoc Additional District Judge-I, Nalanda at Biharsharif in Title Appeal No.40 of 2012 whereby the learned court below rejected the application under Order 41 Rule 5 of the Code of Civil Procedure filed by the defendant-petitioner praying for stay of further proceeding in preparation of final decree till the disposal of Title Appeal No.40 of 2012.

From perusal of the impugned order, it appears that the plaintiff-respondent filed partition suit being Title Suit No.81 of 2005 which has been decreed preliminarily and final decree proceeding is going on. Against the preliminary decree the petitioner has filed Title Appeal No.40 of 2012 and in that appeal application under Order 41 Rule 5 of the Code of Civil Procedure



was filed for stay of final decree preparation.

Order 41 Rule 5 of the Code of Civil Procedure provides that an appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

It is settled principles of law that preliminary decree determines the right and interest of the parties. The suit for partition is not disposed of by passing of preliminary decree. It is by a final decree that immovable property of joint Hindu family is partitioned by metes and bounds. Now, therefore, the partition suit is proceeding. It has not been disposed of. Merely because an appeal has been filed by the petitioner against preliminary decree, further proceeding of the partition suit cannot be stayed. Moreover, if final decree will be passed against the petitioner, it is also appealable under Section 96 of the Code of Civil Procedure.

In my opinion, the preparation of final decree for disposal of the partition suit is not a separate proceeding and, therefore, I find no reason to interfere with the impugned order in



exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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