

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11117 of 2014

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Nand Kishore Poddar son of late Jaideo Poddar, resident of Mohalla Dilawarpur, Bara Near New Police Line, P.O. Munger Police Station- Kotwali, District- Munger, at present Mohalla- Purabasarai, near Durga Asthan (Bartan Ki Dukan), P.O. Munger, P.S.- Kotwali, District- Munger.

.... Petitioner/s

Versus

1. Omkar Nath Keshri son of Late Sita Ram Keshari.
2. Paras Nath Keshri, son of late Ram Das Keshri Both are resident of Mohalla- Purabsarai, P.O. Munger, Police Station- Kotwali, District- Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Sevak Choudhary, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-07-2016

Heard learned counsel for the petitioner.

The petitioner is the judgment debtor in the eviction suit and is aggrieved by the order passed by the executing court below rejecting the petition filed by the petitioner for stay of further proceeding of the execution case as well as the petition questioning the executability of the decree.

The facts are admitted that the decree holder obtained a decree for eviction from the suit premises against the judgment debtor petitioner on the ground of default in payment of rent. Thereafter, the decree holder-respondents have filed the execution case. In the

execution proceeding, the judgment debtor filed the petition firstly questioning the executability of the decree on the ground that the description of the suit property was vague, and secondly praying for stay of the execution proceeding on the ground that the appeal was pending against the decree. The executing court below has found that there is no vagueness in the description of the suit property and has also further held that the pendency of the appeal will not ipso facto amount to stay of the further proceeding of the execution case.

The learned counsel for the petitioner has accepted that the petitioner has filed the petition in the appeal praying for stay of the further proceeding of the execution case but the petition is still pending and no final order has been passed. It has, therefore, been submitted that the executing court below ought to have stayed the further proceeding of the execution case till the disposal of the appeal.

Considering the submissions and perusal of the impugned order, this Court finds that the executing court below has rightly come to the conclusion that there is no vagueness in the description of the suit property which has been described in the same manner as has been done under the decree. The executing court below has also further rightly come to the conclusion that the pendency of the appeal would not result in stay of proceeding of the execution of the decree under appeal. This Court therefore is not inclined to interfere with the

impugned order in exercise of the jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed. However, this order shall not prejudice the petitioner from pursuing his remedy before the appellate court below in accordance with law.

(V. Nath, J)

Devendra/-

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