

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12231 of 2014

=====

Raj Kishore Pandey son of late Sidhnath Pandey, resident of village+P.O. Baldiha,
P.S. Amnaur, District-Saran.

.... Petitioner/s

Versus

1. Dhurandhar Rai son of Simrik Rai.
2. Chandrika Rai, son of Simrik Rai both residents of village+P.O. Baldiha, P.S.
Amnaur, District-Saran.
3. Raj Kumar Rai, son of Asharfi Rai.
4. Sakaldeep Rai, son of Simrik Rai.
5. Manager Rai, son of Simrik Rai, all three residents of village+P.O. Baldiha, P.S.
Amnaur, District-Saran.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Yashraj Bardhan

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 22-08-2016

Heard learned counsel for the petitioner.

By the impugned order, the learned executing court below
has rejected the prayer of the petitioner for stay of the further
proceeding of the execution case.

The facts are not in dispute that earlier the petitioner as
plaintiff filed a suit for declaration of his title over the suit land with
consequential reliefs. The defendants in that suit filed their counter
claim claiming their right to get a sale deed executed in their favour
by the plaintiff on the basis of an agreement for sale. It has also been



accepted on behalf of the petitioner that the suit was later on compromised between the parties thereto and in accordance with the same the plaintiff-petitioner executed the sale deed with regard to the suit property in favour of the defendant no. 3. The suit was thereafter dismissed for default but the counter claim subsequently came to be allowed and a decree for specific performance of contract was passed in favour of the defendant nos. 4 and 5. The plaintiff-petitioner thereafter filed a miscellaneous case for setting aside the ex parte decree in the counter claim and has also filed a petition for stay of the further proceeding of the execution case filed by the defendant nos. 4 and 5 for getting the decree executed in their favour. The learned executing court below, by the impugned order, has turned down the prayer of the petitioner for stay of the further proceeding of the execution case.

After considering the submissions and the perusal of the impugned order, it is evident that the plaintiff-petitioner admittedly sold away the suit property in favour of the defendant no. 3 during the pendency of the suit itself but subsequently the suit was dismissed for non-prosecution. The counter claim was subsequently decreed ex parte and the said decree has been put to execution. This Court has not been persuaded to find that the learned executing court below has the jurisdiction to allow the prayer for stay of the further proceeding at the instance of the plaintiff-petitioner who has admittedly no title and

possession over the suit property. In this backdrop, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India in order to interdict the impugned order.

The present application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

U			
---	--	--	--