

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1117 of 2014

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Manoj Kumar Sharma Son Of Shri Nand Kumar Sharma Resident Of
Mohalla: Mithapur, P.S.: Jakkanpur, P.O., G.P.O., District: Patna, At
Present 384/776 Nageshwar Colony, Parmanand Path, Boring Road, Patna-
800001, P.S.: Kotwali, P.O., G.P.O., District: Patna

.... Petitioner/s

Versus

1. Hari Gope Son Of Dahar Gope Resident Of Near Shanti Bihar
Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi
Maidan, District: Patna
2. Birendra Gope Son Of Hari Gope Resident Of Near Shanti Bihar
Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi
Maidan, District: Patna
3. Chichu Gope Son Of Hari Gope Resident Of Near Shanti Bihar
Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi
Maidan, District: Patna
4. Jitendra Gope Son Of Hari Gope Resident Of Near Shanti Bihar
Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi
Maidan, District: Patna
5. Shankar Gope Alias Shankar Yadav Son Of Shridhar Gope Resident Of
Near Shanti Bihar Apartment, Towards South Of R.B.I., P.O., G.P.O.,
P.S.: Gandhi Maidan, District: Patna
6. Rajesh Gope Son Of Shridhar Gope Resident Of Near Shanti Bihar
Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi
Maidan, District: Patna
7. Laddu Gope Son Of Late Kanshi Gope Resident Of Mohalla: Bhawar
Pokhar, P.S.: Pirbahore, P.O.: Bankipur, District: Patna
8. Surendra Prasad Singh Son Of Late Dwarika Prasad Singh Resident Of
Behind Reserve Bank Of India, Near Alambic Compound, Salimpur
Ahara, P.S.: Gandhi Maidan, P.O.: Kadamkuan, District: Patna
9. Upendra Kumar Sinha Son Of Shri Hari Narayan Prasad Resident Of
Behind Reserve Bank Of India, Near Alambic Compound, Salimpur
Ahara, P.S.: Gandhi Maidan, P.O.: Kadamkuan, District: Patna

.... Respondent/s

with

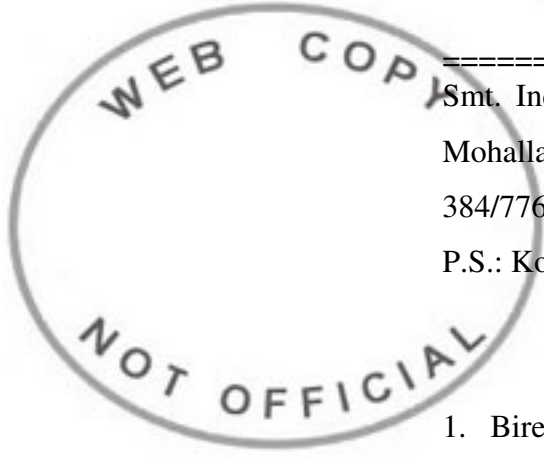
Civil Writ Jurisdiction Case No.2763 of 2014

Smt. Indramani Sharma Wife Of Shri Nand Kumar Sharma Resident Of Mohalla: Mithapur, P.S.: Jakanpur, P.O., G.P.O., District: Patna, At Present 384/776 Nageshwar Colony, Parmanand Path, Boring Road, Patna- 800001, P.S.: Kotwali, P.O., G.P.O., District: Patna

.... Petitioner/s

Versus

1. Birendra Gope Son Of Hari Gope Resident Of Near Shanti Bihar Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi Maidan, District: Patna
2. Chichu Gope Son Of Hari Gope Resident Of Near Shanti Bihar Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi Maidan, District: Patna
3. Jitendra Gope Son Of Hari Gope Resident Of Near Shanti Bihar Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi Maidan, District: Patna
4. Shankar Gope Alias Shankar Yadav Son Of Late Shridhar Gope Resident Of Near Shanti Bihar Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi Maidan, District: Patna
5. Rajesh Gope Son Of Shridhar Gope Resident Of Near Shanti Bihar Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi Maidan, District: Patna
6. Hari Gope Son Of Late Dahaur Gope Resident Of Near Shanti Bihar Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi Maidan, District: Patna
7. Laddu Singh Son Of Late Kanshi Gope Resident Of Mohalla: Bhawar Pokhar, P.S.: Pirbahore, P.O.: Bankipur, District: Patna
8. Shri Bengali Yadav Alias Shri Bali Rai Alias Bengali Gope Son Of Dublal Yadav Resident Of Behind Reserve Bank Of India, Near Alambic Compound, Salimpur Ahara, P.S.: Gandhi Maidan, P.O.: Kadamkuan, District: Patna
9. Bhagwan Yadav Alias Bhagwan Rai Alias Shiv Bhagwan Gope Son Of



Shri Bangali Yadav Resident Of Behind Reserve Bank Of India, Near
Alambic Compound, Salimpur Ahara, P.S.: Gandhi Maidan, P.O.:
Kadamkuan, District: Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No.2761 of 2014

Ashwani Kumar Sharma Son Of Shri Nand Kumar Sharma Resident Of
Mohalla: Mithapur, P.S.: Jakanpur, P.O., G.P.O., District: Patna, At Present
384/776 Nageshwar Colony, Parmanand Path, Boring Road, Patna- 800001,
P.S.: Kotwali, P.O., G.P.O., District: Patna

.... Petitioner/s

Versus

1. Birendra Gope Son Of Hari Gope Resident Of Near Shanti Bihar
Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi
Maidan, District: Patna
2. Chichu Gope Son Of Hari Gope Resident Of Near Shanti Bihar
Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi
Maidan, District: Patna
3. Jitendra Gope Son Of Hari Gope Resident Of Near Shanti Bihar
Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi
Maidan, District: Patna
4. Shankar Gope Alias Shankar Yadav Son Of Late Shridhar Gope
Resident Of Near Shanti Bihar Apartment, Towards South Of R.B.I.,
P.O., G.P.O., P.S.: Gandhi Maidan, District: Patna
5. Rajesh Gope Son Of Late Shridhar Gope Resident Of Near Shanti Bihar
Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi
Maidan, District: Patna
6. Hari Gope Son Of Dahaur Gope Resident Of Near Shanti Bihar
Apartment, Towards South Of R.B.I., P.O., G.P.O., P.S.: Gandhi
Maidan, District: Patna
7. Laddu Gope Alias Laddu Singh Son Of Late Kanshi Gope Resident Of
Mohalla: Bhawar Pokhar, P.S.: Pirbahore, P.O.: Bankipur, District:
Patna
8. Shri Bengali Yadav Alias Shri Bali Rai Alias Bengali Gope Son Of Not

Known Resident Of Behind Reserve Bank Of India, Near Alambic Compound, Salimpur Ahara, P.S.: Gandhi Maidan, P.O.: Kadamkuan, District: Patna

9. Bhagwan Yadav Alias Bhagwan Rai Alias Shiv Bhagwan Gope Son Of Shri Bangali Yadav Resident Of Behind Reserve Bank Of India, Near Alambic Compound, Salimpur Ahara, P.S.: Gandhi Maidan, P.O.: Kadamkuan, District: Patna

.... Respondent/s

Appearance :

(In CWJC No.1117 of 2014)

For the Petitioner/s : Mr. Gopal Tiwari

For the Respondent/s : Mr. Null

(In CWJC No.2763 of 2014)

For the Petitioner/s : Mr. Gopal Tiwari

For the Respondent/s : Mr.

(In CWJC No.2761 of 2014)

For the Petitioner/s : Mr. Gopal Tiwari

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

6 12-04-2016 Heard Mr. Shukla, learned senior counsel for petitioners and Mr. Rajendra Narayan, learned senior counsel for the respondent 1st set in all the three writ applications.

At the outset, learned senior counsel for the petitioners has pressed the interlocutory application (I.A. No. 3033 of 2016) which has been filed for substitution of the heirs and legal representatives of the deceased respondent no. 7 Laddu Singh @ Laddu Gope stating therein that he died on 17.12.2014 leaving behind his heirs and legal representatives as mentioned in paragraph-2 of the said application.

The learned senior counsel for the respondent 1st set has raised no objection to the prayer for substitution.

The interlocutory application (I.A. No. 3033 of 2016) is, therefore, allowed and the heirs and legal representatives of the deceased respondent no. 7 Laddu Singh @ Laddu Gope as mentioned in paragraph-2 of the said interlocutory application are substituted in his place.

These three applications under Article 227 of the Constitution of India have been filed by the petitioners aggrieved by the common order dated 22.10.2013 by which the learned appellate court below has extended the order of stay of further proceeding of the Execution Case Nos. 05 of 1997, 06 of 1997 and 07 of 1997.

The factual expose' in the context of the present applications are not in dispute that a suit for specific performance was decreed and the petitioners are the decree holders. They have filed the execution case for execution of the said decree. The respondent 1st set filed the petition under Order 21 Rule 97 C.P.C. obstructing the execution of the decree claiming independent title and possession over the suit property. The said petition, however, was dismissed by the executing court after hearing the parties. The respondent 1st set thereafter preferred the appeals against the order



of dismissal of the petition under Order 21 Rule 97 C.P.C. passed by the court. These appeals have been numbered as Misc. Appeal Nos. 71 of 2011, 72 of 2011 and 73 of 2011 before the appellate court. The prayer made by the appellants in these appeals for stay of the further proceeding of the execution case was allowed initially till the appearance of the respondents in those appeals. The said order of stay however has been extended on the prayer of the appellant-respondent 1st set from time to time. The present application has been filed complaining against one such extension said to have been done by the order dated 22.10.2013.

Mr. Shukla, learned senior counsel for the petitioners has submitted that the three miscellaneous appeals filed before the appellate court below are not maintainable in view of the provision of Order 21 Rule 103 C.P.C. in accordance with which only a first appeal is maintainable against the order dismissing the petition under Order 21 Rule 97 C.P.C. It has been further also submitted that the petitioners have filed the petition questioning the maintainability of the appeals and praying for vacating the order of stay but no order has upto now been passed by the appellate court below. It has, however, been accepted that the said petition filed for vacating the order of stay and challenging the maintainability of the appeals has not been pressed

by the petitioners upto now since after its filing.

Mr. Narayan, learned senior counsel for the respondent 1st set, however, has submitted that there is no foundation for the submission that the appeals filed by the respondent 1st set before the appellate court below are not maintainable in view of the provision of Order 21 Rule 103 C.P.C. It has been propounded that the said provision provides that an order passed under Order 21 Rule 97 C.P.C. would be treated as if it were a decree for the purpose of appeal and in that view of the matter, the appeals filed by the respondent 1st set are maintainable. It has been further also contended that the petitioners are not interested in getting the appeals disposed of in one way or other and their interest is only to linger the matter. The learned senior counsel has relied upon the averments made in the counter affidavit in support of this submission. It has also been submitted that the respondent 1st set is always ready to get the appeals disposed of in accordance with law by the appellate court below.

After considering the submissions and the materials on record, it is manifest that three appeals have been filed and are still pending in the appellate court below at the instance of the respondents 1st set as appellants against the order dismissing the petition under Order 21 Rule 97 C.P.C. The prayer for stay of the



proceeding of the execution case has been granted by the appellate court below after admitting the appeals and the said stay order has been extended from time to time which is also apparent from the order sheet of the appellate court below as brought on record and annexed with the main application. It is apparent, therefore, that after admitting the appeals for hearing the appellate court below has not committed any error or jurisdiction or material irregularity in granting the stay of the proceeding of the execution case in its discretion. However, the stand of the petitioners is that a petition for vacating the order of stay and questioning the maintainability of the appeals as well is still pending and has not been disposed of by the appellate court below. This Court, however, is not impressed with this submission in view of the acceptance of the fact on behalf of the petitioners that the said petition has never been pressed since after its filing. In the above facts and circumstances, this Court is not inclined to entertain these applications under the supervisory jurisdiction of Article 227 of the Constitution of India.

The three applications are accordingly dismissed. However, the petitioners are at liberty to pursue the petition said to have been filed by them praying for vacating the order of stay and questioning the maintainability of the appeals and if such petition

is pressed the same shall be decided by the appellate court below in accordance with law on its own merits and without being prejudiced by any observation made by this Court in this order. At this juncture, it is also pertinent to take into notice the stand taken on behalf of the respondent 1st set that they are ready to get their appeals disposed of as early as possible. In that view of the matter, the learned court below is directed to proceed with the matter expeditiously keeping in view that the decree has been passed in the suit long back.

(V. Nath, J)

Devendra/-

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