

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.16007 of 2014

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Adarsh Pratap Singh Son of late Akhileshwar Prasad Singh, resident of Village-  
Chamrahara, P.O.- Mahnar Road, P.S.- Mahnar, District- Vaishali

.... .... Petitioner/s

Versus

1. Awadhesh Kumar Singh Son of late Sharda Prasad Singh,
2. Mithilesh Kumar Singh, Son of late Sharda Prasad Singh,
3. Ramesh Kumar singh, Son of late Sharda Prasad Singh,
4. Raghubansh Narayan Singh Son of Ravindra Prasad Singh,
5. Most. Man Devi wife of late Akhileshwar Prasad Singh
6. Alok Pratap Singh Son of late Akhileshwar Prasad Singh,
7. Ashok Pratap Singh Son of late Akhileshwar Prasad Singh,
8. Punam Singh Daughter of late Akhileshwar Prasad Singh,
9. Nilam Singh Daughter of late Akhileshwar Prasad Singh,
10. Munni Singh Daughter of late Akhileshwar Prasad Singh, All residents of  
Village- Chamrahara, P.O.- Mahnar Road, P.S.- Mahnar, District- Vaishali
11. Smt. Gayatri Devi Wife of Baidyanath Singh, resident of village-  
Parmanandpur, P.O.- Parmanandpur, P.S.- Mahnar, District- Vaishali
12. Baidyanath Paswan son of Kirat Paswan
13. Ballam Singh Son of Sakaldeo Singh No. 12 AND 13 resident of village-  
Bishunpur, P.O.- Mahnar Road, P.S.- Mahnar, District- Vaishali
14. Ramadhar Singh son of Bachu Singh
15. Raghunath Singh son of Kailu Singh No. 14 AND 15 residents of village-  
Paharpur, P.O.- Mahnar Road, P.S.- Mahnar, District- Vaishali
16. Upendra Singh Son of Hare Singh
17. Ravindra Singh Son of Hare Singh
18. Surendra Singh Son of Hare Singh
19. Anutha Devi wife of Ram Singh
20. Ram Pati Devi @ Madhubala Wife of Krishna Chandra Singh No. 16 to 20  
residents of village- Chamrahara, P.O.- Mahnar Road, P.S.- Mahnar, District-  
Vaishali
21. Jaimala Devi Wife of Deodutt Singh

22. Shiv Kumari Devi Wife of Gajja Singh

23. Madhuri Devi wife of Vinod Singh

24. Shakti Nath Jha son of Shiv Chandra Jha

25. Sachida Singh Son of Rameshwar Singh

26. Ram Naresh Singh Son of Rama Singh

27. Ram Prasad Rai Son of Rama Rai

28. Amarnath Rai son of Jagdish Rai,

No. 21 to 28 residents of Village- Harpur, P.O.- Mahnar Road, P.S.- Mahnar,  
District- Vaishali.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sanjay Kumar Jha, Adv

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 03-05-2016**

Heard Mr. Mahesh Narayan Parbat, learned senior  
counsel appearing on behalf of the petitioner.

2. The present application under Article 227 of the  
Constitution of India has been filed questioning the legal  
acceptability of the order dated 19.07.2014 passed by the learned  
court below refusing the prayer of the petitioner for stay of further  
proceeding of the final decree.

3. The necessitous facts in the present context are that  
a suit for partition was filed, wherein, the present petitioner was  
defendant. According to the petitioner the said suit was decreed ex  
parte against these defendants and thereafter they have filed a  
Miscellaneous Case No. 04 of 2010 for setting aside the said ex



parte decree. In the meantime, the decree holder in the partition suit has filed a petition before the court for preparation of the final decree and accordingly, the final decree proceeding is going on in accordance with law. It appears from the petition dated 07.03.2014 (Annexure-1/A) that the same was filed in the final decree proceeding praying for stay of further proceeding of the Miscellaneous Case No. 04 of 2010. By the impugned order the learned court below has refused the said prayer and dismissed the said petition.

4. The learned senior counsel has submitted that the proceeding of Miscellaneous Case No. 04 of 2010 and final decree proceeding in T.S. No. 588 of 2003 are continuing before the same court and therefore, the substance of the prayer made in the petition (Annexure-1/A) should have been considered which may be pertaining to Miscellaneous Case No. 04 of 2010 with prayer to stay the proceeding of the said miscellaneous case. It has however been accepted that no such petition for stay of the proceeding of the final decree has been filed in the Miscellaneous Case No. 04 of 2010 which has been filed by the defendant-petitioner for setting aside the said ex parte decree in partition T.S. No. 588 of 2003.

5. In view of the aforesaid facts and circumstances, this Court is not inclined to interfere in the impugned order as in the

opinion of this Court the petition filed in the final decree proceeding for stay of the proceeding of Miscellaneous Case No. 04 of 2010 is misconceived as in the final decree proceeding there was no scope for interfering in any manner with the preliminary decree passed in the suit. This Court is also not impressed with the submission on behalf of the petitioner that the petition (Annexure-1/A) should have been treated to have been filed in Miscellaneous Case No. 04 of 2010 itself in view of the averments made therein.

6. In this view of the matter, this Court dismisses the present application with liberty to the petitioners to seek relief by filing petition in accordance with law in the appropriate proceeding. It is, however, observed that if such petition is filed by the petitioner the same shall be considered and disposed of by that court expeditiously preferably within a period of three months in accordance with law without being prejudiced by any observation made in this order.

(V. Nath, J)

Ranjan/-

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