

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13158 of 2014

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1. BHAGWAN GIRI SON OF SHIO RATAN GIRI.
2. SRIKANT GIRI SON OF SRI BHAGWAN GIRI.
3. RAGHO GIRI SON OF SRI BHAGWAN GIRI. ALL RESIDENT OF
MAUZA- TARWARA, P.O.-TARWARA, P.S.- GAUTAM BUDDHA NAGA,
DISTRICT-SIWAN (BIHAR) Petitioners

Versus

1. JANARDAN GIRI SON OF BAIJNATH GIRI. RESIDENT OF MAUZA-
TARWARA, P.O.-TARWARA,P.S.-GAUTAM BUDDHA NAGAR, DISTRICT-
SIWAN (BIHAR)
2. UMAKANT GIRI SON OF LATE BHAGWAN GIRI.
3. RAMAKANT GIRI SON OF LATE BHAGWAN GIRI.AND PANNA DEVI
4. RADHAKANT GIRI @ LALBABU SON OF LATE BHAGWAN GIRI .
5. KAMLA DEVI DAUGHTER OF LATE BHAGWAN GIRI.
6. TARA DEVI DAUGHTER OF LATE BHAGWAN GIRI.
7. BIMLA DEVI DAUGHTER OF LATE BHAGWAN GIRI.
8. BEBI DAUGHTER OF BHAGWAN GIRI. SL.NO.2 TO 8 ARE RESIDENT
OF MAUZA-MANIKPUR,P.O.-MANIKPUR,DISTRICT-GOPALGANJ (BIHAR)
9. KRISHNA DEVI WIFE OF LATE AWADHESH BIHARTI. null
10. MANOJ BHARTI SON OF LATE AWADHESH BIHARTI. null
11. ABIJEET BHARTI SON OF LATE AWADHESH BIHARTI. null
12. AMIT BHARTI SON OF LATE AWADHESH BHARTI. SL. NO.9 TO 12
ARE RESIDENT OF MAUZA-SARAO, P.O.-SARAO, DISTRICT-SARAN
(BIHAR)
13. PUSHPA DAVI WIFE OF RAJU GIRI. RESIDENT OF MAUZA-SARAO
,P.O.-SARAO, DISTRICT-SARAN (BIHAR).
14. RANI DEVI WIFE OF BASHISHT GIRI. RESIDENT OF VILLAGE-
GODNA,P.O.& P.S.-REVILGANJ, DISTRICT-SARAN (BIHAR)
15. RENUKA DEVI WIFE OF MRITUNJAY GIRI. RESIDENT OF VILLAGE-
DEVIDAYALPUR, DISTRIC-GAUTAM BUDH NAGAR,DISTRICT-SIWAN
(BIHAR).
16. SURESH BHARTI SON OF LATE BINDESHWARI BHARTI.
17. MAHESH BHARTI SON OF LATE BINDESHWARI BHARTI.
SL.NO.16&17ARE RESIDENT OF MAUZA-SARAO, P.O.SARAO, DISTRICT-
SARAN(BIHAR)
18. BIJAY LAXMI DEVI DAUGHTER OF BINDESHWARI BHARTI
RESIDENT OF MAUZA- SARAO,P.O.-SARAO, P.S.SARAO,DISTRICT-
SARAN (BIHAR)
19. HARI SHARAN GIRI SON LATE OF SHITAL GIRI.
20. CHANESHARA DEVI WIFE OF NAGINA GIRI DAUGHTER OF LATE
SHITAL GIRI. RESIDENT OF MAUZA-TARWARA,P.O.-TARWARA,P.S.-
GAUTAM BUDDHA NAGAR, DISTRICT - SIWAN (BIHAR).
21. PRAHLAD GIRI SON OF RAMANAD GIR RESIDENT OF MAUZA -
KHURHIA, PARGANA - WAR, P.S. - BARHARIYA, DISTRICT - SIWAN
(BIHAR)
22. MANOJ MISHRA SON OF BASHISTHA MISHRA.
23. KRISHNA KANT MISHRA SON OF MUNNI MISHR. SL. NO.17 TO 18
ARE RESIDENT OF MAUZA-USRI BHAGWAN, P.O.-TARWARA,P.S.-
GAUTAM BUDDHA NAGAR ,DISTRICT -SIWAN (BIHAR)



24. SHYAM BAHADUR SINGH SON OF SURYADEO SINGH. RESIDENT OF MAUZA-ILMATHIPUR, PARGANA-WARA,P.O.TARWARA,P.S.GAUTAM BUDDHA NAGAR,DICTRICT-SIWAN (BIHAR)
25. GORAKH SINGH SON OF THAGI SINGH. RESIDENT OF MAUZA - PARWATIYA,PARAGANA-WARA,P.S.SIWAN,DISTRICT-SIWAN (BIHAR)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raju Giri, Adv.
Mr. Santosh Kumar Mishra, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-10-2016

Heard Mr. Raju Giri, learned counsel appearing for the petitioners.

The petitioners are decree holder in title suit for partition in which the final decree has been passed. The petitioners have filed the execution case for execution of the said final decree. During the pendency of the execution proceeding, a petition was filed by some persons, who were strangers to the decree, under Order 21 Rule 97 C.P.C. resisting the execution of the decree. On the said petition Miscellaneous Case No.33/2007 has been instituted. The learned executing court in view of the institution of the miscellaneous case has passed the order on 09.02.2011 directing that the proceeding of the execution case would be undertaken after the disposal of the Miscellaneous Case No.33/2007. The petitioners-decree holder approached this Court against the said order by filing CWJC No.3241/2013 which was disposed of directing the disposal of the



miscellaneous case within 8 months by order dated 26.02.2013 (Annexure-7). The stand of the petitioners at present is that the said miscellaneous case has not been disposed of within 8 months or even up-till-now in spite of the direction of this Court.

Mr.Giri, learned counsel for the petitioners has submitted that even after obtaining the decree in their favour in the year 1994 the petitioners have still not been able to get the delivery of possession, as per the law, over the suit property in accordance with the decree, for the sole reason that a miscellaneous case under Order 21 Rule 97 C.P.C has been filed. It has been contended that the learned court below has not disposed of the said petition registered as Miscellaneous Case No.33/2007 up-till-now and has also not disposed of the petition filed by the petitioners praying to bifurcate the execution proceeding as the prayer of the objectors under Order 21 Rule 97 C.P.C relates only to a portion of the suit property which is separable and therefore the execution case can be proceeded with regard to the remaining suit properties. The learned counsel has also submitted that the said petition which was filed by the petitioner on 25.02.2011 has still not been taken up by the learned court below for consideration and appropriate order.

After considering the submissions and perusal of the materials on record, it is evident that the proceeding of the



execution case has been stayed due to the pendency of the Miscellaneous Case No.33/2007 filed under Order 21 Rule 97 C.P.C. According to the petitioners the said miscellaneous case has still not been disposed of. There has been a direction by this Court for its disposal within 8 months. In view of the fact that the order passed by learned court below staying the further proceeding of the execution case till the disposal of the miscellaneous case was challenged by the petitioner in CWJC No.3241/2013, this Court , therefore, is not inclined to pass any fresh order invoking the jurisdiction under Article 227 of the Constitution of India in view of the order already passed on 26.02.2013. However, in view of the facts and circumstances of the case, this application is disposed of with liberty to the petitioners to approach the executing court renewing their prayer as made in the petition dated 25.02.2011 which according to the petitioner has still been pending and not considered by the court. If such petition is filed, the executing court below is enjoined to pass appropriate order in accordance with law without being prejudiced by this order.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2016
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