

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6135 of 2015

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1. Sachchidanand Jha S/o late Jamiri Lal Jha, resident of village-Kanti Kushi, P.O.- Kanti, P.S.- Kanti, District- Muzaffarpur.

.... Petitioner/s

Versus

1. Mostt. Chandrakala Devi W/o late Amiri Lal Jha resident of village-Kanti Kushi, P.O.- Kanti, P.S.- Kanti, District- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar @ S.K.

For the Respondent/s : Mr. Nichiket Jha

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

2 28-03-2016 Heard Mr. Sanjay Kumar, learned counsel for the petitioner and Mr. Nichiket Jha, learned counsel for the respondent.

The Court below by order dated 05.07.2014 rejected the application filed by the petitioner for stay of further proceeding in Partition Suit No. 220 of 2000.

Learned counsel for the petitioner submitted that the preliminary decree has already been passed ex parte in the Partition Suit. Therefore, the petitioner has filed an application under Order 9, Rule 13 CPC being Misc. Case no. 03 of 2005, which is still pending. If further proceeding in Partition Suit is not stayed then the final decree be prepared.

On the other hand, learned counsel for the

respondent submitted that if Miscellaneous Case will be allowed, automatically final decree will be set aside.

Perused the order passed by the court below.

Admitted fact is that the Partition Suit has been decreed preliminary and final decree proceeding is going on. So far Miscellaneous Case is concerned, it is of the year 2005 . Same has been filed for setting aside the ex parte preliminary judgment and decree. If that preliminary ex parte judgment and decree will be set aside, automatically the final decree will fail. Therefore, the petitioner , if so advised, may pursue his Miscellaneous Case before the trial court for expeditious disposal but for that purpose no question of stay of further proceeding in final decree arises.

This application is disposed of with liberty to the petitioner to approach the court below for expeditious disposal of Miscellaneous Case.

(Mungeshwar Sahoo, J)

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