

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3956 of 2011

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1. Ashok Mishra @ Ashok Missir Son Of Late Saryug Lal Missir @
Saryu Mishra Resident Of Village - Bhadreshwar, P.O. Forbesgunj,
P.S. Jogbani (Bathnaha) District - Araria

.... Petitioner/s

Versus

1. Sri Devendra Misir Son Of Late Dikhit Lal Missir Resident Of
Village - Bhadreshwar, P.O. Forbesganj P.S. Jogbani, District - Araria
2. Sri Upendra Missir Son Of Late Dukhit Lal Missir
3. Sri Mahendra Missir Son Of Late Dukhit Lal Missir
4. Bachcha Missir (Minor) Son Of Mahendra Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
5. Sri Prakash Missir (Minor) Son Of Upendra Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
6. Sri Prabhat Missir (Minor) Son Of Upendra Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
7. Sri Rupak Missir (Minor) Son Of Upendra Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
8. Kumari Mala Devi (Minor) Daughter Of Sri Upendra Missir
Resident Of Bhadeshwar, P.O. Forbesganj District - Araria
9. Bala Kumari (Minor) Daughter Of Sri Upendra Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
10. Kumari Lata Devi (Minor) D/O Debendra Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
11. Kumari Bibha (Minor) D/O Debendra Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
12. Sri Mahesh Missir Son Of Late Anant Lal Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
13. Naresh Missir (Minor) Son Of Sri Mahesh Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
14. Dinesh Missir (Minor) Son Of Sri Mahesh Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
15. Yogesh Missir (Minor) Son Of Sri Mahesh Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
16. Ramchandra Missir (Minor) Son Of Late Suresh Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
17. Mangali Devi (Minor) D/O Late Suresh Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
18. Soni Devi (Minor) D/O Late Suresh Missir Resident Of
Bhadeshwar, P.O. Forbesganj District - Araria
19. Kumari Prabha Devi (Minor) D/O Mahesh Missir Resident Of

- Bhadeshwar, P.O. Forbesganj District - Araria
20. Shankar Missir (Minor) Son Of Late Prem Lal Missir Resident Of Bhadeshwar, P.O. Forbesganj District - Araria
21. Shekhar Missir (Minor) Son Of Late Prem Lal Missir Resident Of Bhadeshwar, P.O. Forbesganj District - Araria
22. Shashi Shekhar Missir (Minor) Son Of Late Prem Lal Missir Resident Of Bhadeshwar, P.O. Forbesganj District - Araria
23. Bina Devi (Minor) D/O Late Prem Lal Missir Resident Of Bhadeshwar, P.O. Forbesganj District - Araria
24. Shambhu Missir (Minor) S/O Sarju Lal Missir Resident Of Bhadeshwar, P.O. Forbesganj District - Araria
25. Pradeep Missir(Minor) S/O Sarju Lal Missir Resident Of Bhadeshwar, P.O. Forbesganj District - Araria
26. Babul Missir (Minor) S/O Sarju Lal Missir Resident Of Bhadeshwar, P.O. Forbesganj District - Araria
27. Usha Devi(Minor) D/O Sarju Lal Missir Resident Of Bhadeshwar, P.O. Forbesganj District - Araria
28. Bendey Sah Son Of Lalhu Sah Resident Of Phennu, P.S. Forbesganj, District Araria
29. Krisnadeo Son Of Maku Sah Resident Of Phennu, P.S. Forbesganj, District Araria
30. Kishna Gope Son Of Panchu Gope Resident Of Paclhasi, P.S. Narpatganj, District - Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 27-07-2016

Heard learned counsel for the petitioner in support of the writ petition which seeks to assail the order dated 13.9.2010 passed by the learned Additional District Judge, Fast Track Court No.II, Araria, in Title Suit No. 50 of 2003 by the defendant-petitioner of Title Suit No. 35 of 59 which was filed by one of the respondents



herein for partition in the property of the joint Hindu family. In the appeal, a petition under Order 41, Rule 5 for staying the Execution Case No. 2 of 2003/9/2004 was filed by the petitioner raising a grievance with respect to allotment of share to the co-sharers. A rejoinder thereto was filed by the contesting respondents of the appeal on 07.09.2010. Learned appellate Court, while rejecting the said prayer of the appellant -petitioner observed in the impugned order as under:-

“ After hearing both the parties and perusal of the record of this appeal, it appears that the most desired order was already passed in Title appeal No. 15/92 which was preferred against the final decree, vide para 3 and 4 of memo of the present appeal and even Misc. Case No. 22/08, the certified copy(of order dt. 18.5.09) of which Misc. case has been filed by the appellant, shows that the Survey knowing pleader commission has been directed to visit the spot with Nazir and to prepare scatch Map, after delivery of possession, according to his report, which is part of the final decree.

In my opinion the appellant have not been able to make out any prima facie case for stay of the concerned execution proceeding nor the balance of convenience appears to be in favour of stay of execution proceeding. There is also no any irreparable loss to the appellant. As stated above two courts have already passed order, Firstly in Title appeal No. 15/92 and secondly in Misc. Case No. 22/08 and so there does not appear any need to pass any other order, regarding the execution of Final decree. In these circumstances, I do not find any merit in the petition of the appellant dt. 4.9.10, to stay the concerned execution proceeding in Case No. 2/03/9/04 pending before the learned Sub-Judge

Ist Purnea. In these circumstances the rulings relied upon by the appellant do not appear to be helpful him. Accordingly that petition of the appellant is rejected. Put up on 18.9.10 for further steps for hearing”.

Learned counsel for the petitioner has submitted that the impugned order has been passed erroneously as the petitioner had made out a case for grant of stay of the Execution proceedings. In exercise of its power under Article 227 of the Constitution of India, the Court would interfere with the order, if any fundamental flaw has been committed by the learned Court below. The matter pertains to partition of the joint family property. The Court has recorded reasons for not granting the relief of staying the Execution proceedings. The reasons do not appear to be patently illegal or suffering from any material irregularity. I find no merit in this writ application.

It is, accordingly, dismissed.

(Kishore Kumar Mandal, J)

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