

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.914 of 2016

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1. Ashok Kumar Singh @ Ashok Singh Son of Indradeo Singh Resident of Village - Karigaon, P.S. - Mohania, District - Kaimur (Bhabhua)

.... Petitioner

Versus

1. Ramawati Devi wife of Arvind Kumar Singh and daughter of Sri Bali RamSingh resident of village Miriya Khurd P.S. Sonhan District Kaimur, Bhabua.

2. Bali Ram Singh Son of Late Ram Vyas Singh

3. Indradeo Singh Son of Late Ram Vyas Singh

4. Anil Singh Son of Sri Indradeo Singh

5. Arvind Singh Son of Sri Indradeo Singh

6. Ajay Singh Son of Sri Indradeo Singh All Serial No. 2 to 6 are residents of village Karigaon P.S. Mohania, District - Kaimur (Bhabhua).

7. The Tiljhari Devi wife of Sri Jagdish Singh resident of village and Post Khenethi, P.S. Sonah, District - Kaimur, Bhabhua.

8. Indrasani Devi wife of Bishwanath Singh resident of village and Post Aslaspur P.S. Bhabhua District - Kaimur, Bhabhua.

9. Siryasani Devi wife of Hare Krishna Singh resident of village and Post Dhamej, P.S. Karghar, District - Rohtas, Sasaram Respondents

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Appearance :

For the Petitioner : Mr. Durga Nand Jha, Adv.

For the Respondents : Mr. Amish Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

4 04-12-2017

Heard Mr. Durga Nand Jha, the learned counsel, appearing for the petitioner and Mr. Amish Kumar, the learned counsel appearing for the respondents.

This civil miscellaneous petition is filed against the order, dated 15.06.2016, passed in Execution Case No. 3 of 2013 by Sub Judge, V, Kaimur at Bhabhua, by which the learned Sub Judge dismissed the petition of the petitioner filed under Order 21 Rule 29 of the Civil Procedure Code.

The learned counsel for the petitioner submits that the plaintiff filed Title Partition Suit No. 307 of 2006 and the same was decreed and Execution Case No. 3 of 2013 is pending. One of the defendants of Title Partition Suit No. 307 of 2006 also filed Title Suit No. 248 of 2011 in which the petitioner is also one of the defendants. The petitioner filed this petition for stay of further proceeding of Execution Suit No. 3 of 2013 on the ground that a suit bearing Title Suit No. 248 of 2011 is pending between the



parties. I do not find any illegality or jurisdiction error in the order of the learned Sub Judge. The petitioner was also one of the defendants in Title Partition Suit No. 307 of 2006. The suit was preliminary decreed, Pleader Commissioner was appointed and the share of the plaintiff of Title Partition Suit No. 307 of 2006 was carved out and separated, thereafter, final decree was prepared. The plaintiff, thereafter, filed execution case, but, the petitioner, who was defendant in Title Partition Suit No. 307 of 2006, did not file any appeal either against preliminary or final decree. The father of the petitioner filed C.W.J.C. No. 12449 of 2013, but, the same was dismissed as withdrawn. Thereafter, the appeal against the final decree passed in Title Partition Suit No. 307 of 2006 was preferred. Neither the petitioner nor any of the appellants, who preferred appeal against the judgment and decree of Title Partition Suit No. 307 of 2006, filed any petition under Order 41 Rule 5 of the Civil Procedure Code for stay of execution proceeding. Mere pendency of another suit does not ipso facto give right to a party to get stay of the execution case. Under Order 21 Rule 29 of the Civil Procedure Code, the Court has got discretionary power to stay execution pending a suit if a party is able to show sufficient cause that irreparable loss would cause, but, no such cause was shown and, therefore, I do not find any reason to interfere in the order, dated 15.06.2016, passed by the learned Sub Judge, V, Kaimur at Bhabhua, in Execution Case No. 3 of 2013.

Accordingly, this civil miscellaneous petition is **dismissed**.

(Prabhat Kumar Jha, J)

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