

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.265 of 2016

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Ram Awatar Teli @ Ramautar Teli, son of Gopla Teli, Resident of Village-
Panch Dewari, Police Station- Kateya, District- Gopalganj.

.... Petitioner

Versus

1. Ram Prasad Teli Son of Mukhlal Teli
2. Sheo Prasad Teli Son of Mukhlal Teli
3. Ram Raksha Sah Son of Kitarath Sah All are residents of village-
Panchdewari, P.O.- Panchdewari, Police Station- Kateya, District-
Gopalganj.

.... Respondents

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Appearance :

For the petitioner : Mr. Lokesh Kumar Singh, Advocate
For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

3 18-03-2017

Heard learned counsel for the petitioner.

By the impugned order, learned court below has allowed the prayer of the judgment-debtor for stay of the proceeding in the final decree during the pendency of the suit which has been subsequently filed challenging the preliminary decree.

The fact is not in dispute that the present petitioner as plaintiff filed a suit for partition against the defendants-respondents. However, the suit was eventually dismissed. The present petitioner filed an appeal challenging the decree of the dismissal of the suit. The appellate court below allowed the appeal and granted preliminary decree for partition as prayed. It is



not in dispute that the proceeding before the appellate court below was decided ex parte.

The defendants of the suit after getting knowledge of the ex parte decree passed at the appellate stage have filed a suit for setting aside the said decree. The defendants-respondents also filed a petition in the final decree proceeding, initiated on the basis of the preliminary decree granted by the appellate court below for staying the further proceeding of the final decree proceeding during the pendency of the suit. The appellate court below has allowed the prayer and stayed the proceeding of the final decree.

After considering the submission made on behalf of the petitioner, this Court is not persuaded to hold that the learned court below has wrongly passed the order impugned after holding that the stay of final decree proceeding would not cause any irreparable loss to the decree-holder.

In the facts and circumstances, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order. The application is accordingly dismissed.

(V. Nath, J)

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