

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.308 of 2016

=====

Noor Bandi & Ors.

.... Appellant/s

Versus

Ajijul Haque & Ors.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Syed Qaisar Hasan

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

7 08-02-2017 Heard learned counsel for the petitioners and learned
counsel for the respondents.

2. Perused the impugned order dated 08.04.2016 whereby the learned 6th Additional District Judge, Gopalganj in Title Appeal No.28 of 2014 rejected the stay application filed by the petitioners under Order 41 Rule 5 of the Code of Civil Procedure and refused to stay the further proceeding of Execution Case No.06 of 2014.

3. The learned counsel for the petitioners submitted that the final decree has been passed in partition suit and now the respondents are taking steps for delivery of possession of the property, which are in possession of the petitioners.

4. The learned counsel for the respondents referred to the Division Bench decision of this Court in the case of **Mostt. Ramkali Devi Vs. Jagdish Prasad, 2001 (4) P.L.J.R. 273** and



submitted that delivery of possession of the properties, which are either agricultural or orchard cannot be stayed as no prejudice will be caused to the judgment-debtor.

5. It may be mentioned here that this Court in the case of **Byasdeo Mandal & Ors. Vs. Smt. Longi Devi & Ors.** in Second Appeal No.392 of 2009 on 16.08.2012 relying on this Division Bench decision of the High Court wherein it has been held that it is not the practice of Patna High Court to stay delivery of possession of the properties which are either agricultural or orchard rejected the stay application filed before this court in the aforesaid Second Appeal. Against this order dated 16.08.2012 the appellant therein filed Civil Appeal No.8775 of 2013 arising out of S.L.P.(C) No.26142 of 2012. The Supreme Court granted leave and the Hon'ble Supreme Court held that having regard to the fact that Second Appeal is pending before the High Court and the appellant is in possession of the subject property, we are satisfied that if the decree of the first appellate court is allowed to be executed during pendency of the Second Appeal, the appellant may be put to irreparable loss and accordingly the Supreme Court allowed the appeal and directed that during the pendency of the Second Appeal status quo with regard to subject property shall be maintained. In other words, it can very safely be held that



impliedly the Division Bench decision has already been overruled because the order of this Court was on the basis of Division Bench decision. The order of this court was set aside by allowing the Special Leave Petition meaning thereby the Division Bench decision has been overruled.

6. In view of the above facts and circumstances of the case this civil miscellaneous application is allowed. The impugned order dated 08.04.2016 passed by 6th Additional District Judge, Gopalganj in Title Appeal No.28 of 2014 is hereby set aside. The stay application under Order 41 Rule 5 CPC filed by the petitioners herein is allowed. The further proceeding in Execution Case No.06 of 2014 is stayed till the disposal of the title appeal.

7. The parties are at liberty to pray for expeditious hearing and disposal of the title appeal before the lower appellate court.

(Mungeshwar Sahoo, J)

Harish/-

U			
---	--	--	--

