

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.543 of 2016

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1. Sri Nath Thakur, Son of Late Harischandra Thakur, residents of Mohalla- Amla Tola, Police Station- Town, District- Katihar Petitioners

Versus

1. Raju Thakur
2. Mohan Thakur
3. Deepak Thakur All Sons of Late Rameshwar Thakur, resident of Mohalla- Janki Asthan, Police Station- Town, District- Sitamarhi
4. Uma Devi, Wife of Madan Gopal Bishwakarma, Daughter of Late Harischandra Thakur, residents of Mohalla- Amla Tola, Police Station- Town, District- Katihar
5. Jagdish Thakur
6. Satish Kumar Both Sons of Rameshwar Thakur, resident of Mohalla- Janki Asthan, Police Station- Town, District- Sitamarhi
7. Tara Devi, Wife of Late Ramchandra Thakur
8. Geeta Devi
9. Gouri Devi
10. Rekha Devi All daughters of Late Ramchandra Thakur
11. Nand Kishore Thakur
12. Mithilesh Thakur Both Sons of Late Ramchandra Thakur, Respondent nos. 7 to 12 are residents of Mohalla- Amla Tola, Police Station- Town, District- Katihar
13. Nand Kishore Bishwakarma
14. Raj Kumar Bishwakarma @ Giridhari Bishwakarma
15. Raj Kumari Devi
16. Lakshmi Devi
17. Janak Kumari
18. Maya Devi Respondent nos. 13 to 18 are Sons and daughters of Late Megha Lal Bishwakarma, residents of Mohalla- Central Market No. 51, Police Station- Bettiah, District- West Champaran
19. Om Prakash Thakur
20. Deepak Thakur
21. Sumitra Devi Respondent nos. 19 to 21 are Sons and daughter of Ramashish Thakur
22. Mahesh Thakur
23. Dinesh Thakur
24. Suresh Thakur Respondent nos. 22 to 24 are Sons of Ram Lakhan Thakur
25. Seeta Devi, Wife of Late Prahlad Thakur
26. Ashok Sharma
27. Kishou Sharma
28. Deepu Sharma
29. Pappu Sharma
30. Guriya Respondent nos. 26 to 30 are Sons of Daughters of Late Prahlad Thakur, Respondent nos. 19 to 30 are residents of Mohalla- Janki Asthan, Police Station- Town, District- Sitamarhi
31. Raj Kumar Badhwani, Son of Khail Das Badhwani, residents of Mohalla- Amla Tola, Police Station- Town, District- Katihar
32. Malti Bishwakarma, Wife of Jaikant Bishwakarma
33. Bimal Sharma, Wife of Bishwanath Sharma
34. Vidya Sharma, Wife of Shiv Shankar Sharma
35. Sheela Prasad, Wife of Hari Shankar Sharma



36. Rani Sharma, Wife of Moti Lal Sharma
37. Indu Sharma, Wife of Dr. Om Prakash Sharma
38. Punam Sharma, Wife of Dr. Brij Lal Sharma Respondent nos.32 to 38 are residents of Mohalla- Janki Asthan, Police Station- Town, District- Sitamarhi
.... Respondent/s
with

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Civil Writ Jurisdiction Case No. 6510 of 2016

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Nand Kishore Thakur
.... Petitioner/s
Versus
Raju Thakur & Ors
.... Respondent/s

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Appearance :

(In C.Misc. No.543 of 2016)

For the Appellant/s : Mr. Ajay Kumar

For the Respondent/s : Mr. Madhav Roy

(In CWJC No.6510 of 2016)

For the Petitioner/s : Mr. Tara Nath Jha

For the Respondent/s : Mr. Madhav Roy

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 28-11-2017

Heard Mr. Tara Nath Jha and Ajay Kumar, the learned counsel for the petitioners, and Mr. Madhav Roy, the learned counsel for the respondents.

Civil Misc. No. 543 of 2016 and CWJC No. 6510 of 2016 are filed against the order dated 28.01.2016 passed in Title Appeal No. 01 of 2016 by which the learned District Judge stayed the judgement and decree passed in Title Suit No. 19 of 1982.

The learned counsel for the petitioners assailed the order on the ground that under Order 41 Rule 5 of the C.P.C. the learned appellate court cannot stay the judgement and decree and the provision is meant for staying the execution case filed for execution of decree. It is further



submitted that Title Suit No. 19 of 1982 was filed for partition of suit property and the same was decreed but no execution case is filed. Some of the defendants filed Title Appeal No. 01 of 2016 and in the aforesaid Title Appeal one petition under Order 41 Rule 5 of the C.P.C. was filed. On such, the learned District Judge ordered for stay of judgement and decree although no execution case was pending on the date of order.

On the other hand, Mr. Madhav Roy, the learned counsel for the respondents, submits that even if no execution case was pending, the court has got inherent jurisdiction to stay the proceeding initiated in pursuance of judgement and decree, if the proceeding causes irreparable loss to the appellant. Of course, proceeding under Order 41 Rule 5 is not appropriate for the purpose but the court has got jurisdiction to stay the proceeding to avoid any further inconvenience or irreparable loss to a party. The learned counsel for the respondents placed heavy reliance on the judgement of this court reported in **AIR 1921 328 (Nana Ojha v. Sarbhoo Dutt Ojha & Ors)**. The learned counsel for the respondents also placed reliance upon another judgement of this court reported in **AIR 1936 408 (Bengal Coal Co. Ltd. v. Brijdeo Narayan Singh)** and submitted that respondents have filed another suit No. 21 of 1986 for setting aside the judgement and decree but I find that the contention of the learned counsel for the respondents is not acceptable and has got on substance.

Admittedly, Title Suit No. 19 of 1982 was decreed but no execution case was pending on the date of order. The defendants preferred appeal against the judgement and decree passed in Title Suit No. 19 of 1982



bearing Title Appeal No. 01 of 2016 but neither the execution case nor any proceeding in pursuance of the judgement and decree passed in Title Suit No. 19 of 1982 is pending in the court of Sub-Judge, who decreed the suit. In the case of Nana Ojha (supra) a division bench of this court held that order 41 Rule 5 of the C.P.C. is meant for staying the execution case but if any proceeding which appears to be in cumbersome and incur heavy expenditure in pursuance of the preliminary decree is pending the court under inherent jurisdiction can stay the proceeding till disposal of the appeal.

Having considered the facts aforesaid, I find that the learned District Judge has committed illegality in staying the judgement and decree of the Title Suit No. 19 of 1982 on a petition filed under Order 41 Rule 5 of the C.P.C. without there being pendency of any proceeding or execution case.

Accordingly, the order dated 28.01.2016 passed in Title Appeal No. 01 of 2016 is set aside. Both the petitions are allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	4.12.2017
Transmission Date	N.A.

