

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13147 of 2010

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1. Bindeshwar Rai S/o Late Basudeo Rai, resident of village - Akhtiarpur
Chandauli, P.S.- Pusa, Distt.- Samastipur
 2. Md. Quayam Khan S/o Md. Gaffar Khan, resident of village-Akhtiarpur
Chandauli, P.S.- Pusa, Distt.- Samastipur

.... Petitioner/s

Versus

1. The State of Bihar & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Abu Haider and Md. Abut Shageer, Adv.
For the Respondent No. 3 : Mr. Prabhakar Kumar, Adv.
For the Respondent nos. 1 and 2 : Mr. Mrigendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-12-2017

This application has been filed to set aside the order dated 25th May 2010 passed by the learned 1st Additional District Judge, Samastipur in Title Appeal No. 60 of 2009.

2. Heard learned counsels for the petitioners as well as the respondents.

3. This petitioner was defendant in T.S. No. 111 of 2000, which was decided by the learned Civil Judge, Junior Division, Samastipur. The learned Civil Judge decreed the suit in favour of the respondents. The respondents in order to execute the decree, filed an Execution Case No. 8 of 2009 before the Executing Court. The respondents admittedly are not in possession over the suit property. According to the case of petitioner-defendant, the said land in dispute



is presently used as *Rasta*, which is portion of a big plot known as Kabristan. If the decree is executed, the petitioners will be deprived of their valuable right in the event if they succeed in appeal. In this view of the matter, the Appellate Court ought to have stayed the proceeding of execution case till the disposal of appeal.

4. In view of above facts, the impugned order refusing to stay the proceeding of Execution Case No. 8 of 2009 is set aside and this application is allowed. The further proceeding of Execution Case No.8 of 2009, as stayed by this Court on 22.08.2014, is confirmed. The proceeding of the aforesaid execution case shall remain stayed till the disposal of appeal before the lower appellate Court.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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