

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.943 of 2016

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1. Devendra Paswan S/O Laxmi Paswan resident of Village- Husainabad
Pargana- Shahjahanpur Post+P.S- Moro District- Darbhanga
.... Petitioner

Versus

1. Baidyanath Paswan S/O Late Srawan Paswan
2. Simati Jagtarni Devi W/O Baidyanath Paswan
3. Laxmi Paswan S/O Late Turant Paswan @ Turant Lal Paswan All are
resident of Vill- Husainabad Post+P.S.- Moro District- Darbhanga
.... Respondents

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Appearance :

For the Petitioner : Mr. Kedar Jha, Adv.
For the Respondents :

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

5 12-12-2017

Heard the learned counsel for the petitioner.

No one appeared on behalf of respondents.

The petitioner has filed this civil miscellaneous petition for quashing the order, dated 24.06.2016, by which the learned Additional District Judge, II, Darbhanga, in T.A. No. 21 of 2008 rejected the petition of the petitioner for staying the execution case of the petitioner.

The plaintiff filed a suit for declaration of title and recovery of possession. The suit was decreed. The petitioner filed Title Appeal No. 21 of 2008, but, in the meantime, the plaintiffs-respondents filed Execution Case No. 9 of 2011, which is pending in the Court of Munsif, I, Darbhanga. The learned Additional District Judge, II, Darbhanga, has rejected the petition of the petitioner for stay of the execution.

The learned counsel for the petitioner submits that if the execution case is not stayed till the disposal of the appeal, the petitioner shall be evicted from the suit premises. The petitioner is



ready to argue the title appeal.

The learned Additional District Judge has only rejected the petition for stay of the execution case on the ground that earlier petition for stay of execution the case was rejected. It appears that the petitioner has filed appeal against the order of judgment and decree passed for declaration of title and recovery of possession. If the petitioner is evicted from the suit premises before the disposal of the appeal, the petitioner would suffer irreparable loss.

Accordingly, I am of the view that the learned Additional District Judge, II, Darbhanga, erroneously rejected the petition of the petitioner for stay of the execution case and, thus, the order, dated 24.06.2016, is set aside. The Execution Case No. 9 of 2011 is stayed with a direction to the petitioner to begin the argument and the learned Additional District Judge shall dispose off the appeal within six months, from the date of receipt of this order.

This civil miscellaneous petition is **allowed**, accordingly.

(Prabhat Kumar Jha, J)

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