

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1142 of 2017

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1. Kamal Kumar Jindal, son of Late Gokhul Chand Jindal, resident of Forbesganj, New Ward No.20, P.S.- Forbesganj, District- Araria.
 2. Hanumanmal Sharma, son of Late Kishun Sharma, resident of Ward No.5, P.O. & P.S.- Forbesganj, District- Araria.

.... Petitioner/s

Versus

1. Arun Chand Das,
2. Dinesh Chnd Das,
3. Mahendra Prasad Das,
4. Upendra Das,
5. Kameshwar Das,
6. Vikram Das @ Vijay Das,
7. Raju Das, All sons of Late Nagarchand Das,
8. Suman Kumar,
9. Raj Kumar Das, Both sons of Late Kiranchand Das,
10. Nirmal Kumar Das,
11. Pradeep Kumar Das, both sons of Slate Bimal Chand Das,
12. Phool Kumari, wife of Shyam Narayan Das and daughter of Late Nagarchand Das, All residents of Mauja+P.O.- Matiyari, Police Station- Forbesganj, District- Araria.

.... Respondents 1st set

13. Bijay Kumar, son of Udai Chand Lal, resident of Village+P.S.- Forbesganj, District- Araria.
14. Om Prakash Jaiswal,
15. Nand Gopal Jaiswal,
16. Ashok Kumar Jaiswal, All sons of Late Krishna Bihari Jaiswal and all residents of Sadar Road Forbesganj, P.S.- Forbesganj, District- Araria.
17. Meena Choudhary, D/o Late Krishna Bihari Jaiswal, wife of Sri Bharat Bhushan Choudhary, resident of Flat No.604, 6th Floor, Utkarsh Anuradha Apartment, Civil Lines, P.S.- Civil Lines, District- Nagpur (Maharastra).
18. Gyanti Choudhary, D/o Late Krishna Bihari Jaiswal, wife of Anant Prasad Choudhary, resident of Anant Kothi in front of Transformer, Road No.23, Rajiv Nagar, P.S.- Rajiv Nagar, District- Patna.
19. Neelam Jaiswal, D/o Late Krishna Bihari Jaiswal, wife of Sri Badri Prasad Jaiswal, resident of Prince Anwar Sah Road, 58/84, Near Ram Mandir, Kolkata-45.
20. Sushma Kalwar, D/o Late Krishna Bihari Jaiswal, wife of Dr. Balak Prasad Jaiswal, resident of Nahar Katiya, Thana Road, P.S.- Nahar Katiya, District- Dibrugarh (Assam).
21. Babli Jaiswal, D/o Late Krishna Bihari Jaiswal, Wife of Sri Niraj Krishna Jaiswal, resident of Plot No.16 to 19 and 21 to 25, Sector 17 Mumbai (Maharastra).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey



Mr. Parth Gaurav
Ms. Shambhavi Shankar
Mr. Anshu Raj Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

4 09-03-2018 Heard both sides.

The petitioners being aggrieved by the order dated 09.06.2017 passed in Title Execution Case No.1 of 2005 filed this civil miscellaneous petition for a direction to the Executing Court to firstly decide the petition of the petitioners filed under Order 21 Rule 97 C.P.C..

Mr. S.S.Dvivedi, learned senior counsel for the petitioners submits that petitioners are in possession of the land but they were not party to the title suit decreed in favour of the decree holder, the petitioner of Title Execution Case No.1 of 2005. The Executing Court instead of disposing of the petition of the petitioners directed the S.P. and Collector for effecting the delivery of possession.

Mr. Narayan Singh, learned counsel for the respondents submits that the decree holder has got no objection if firstly petition of the petitioners be disposed of. Although, the petitioners have got no case and the petition of the petitioners is of no merit.



Having considered the submissions, I find that the court should have firstly dispose of the petition of the petitioners filed under Order 21 Rule 97 C.P.C. before proceeding further for delivery of possession in favour of the decree holder.

Accordingly, I direct the Executing Court to firstly dispose of the petition of the petitioners filed under Order 21 Rule 97 of the C.P.C. and thereafter dispose of Title Execution Case No.1 of 2005. Till the disposal of the petition of the petitioners, filed under Order 21 Rule 97, the execution case shall remain stayed.

Thus, this Civil Miscellaneous petition is disposed of.

(Prabhat Kumar Jha, J)

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