

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20623 of 2013

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Mukti Nath Prasad Son of Late Thakur Prasad, resident of mohalla- Dahiyawan,
Town- Chapra, P.O. Chapra, P.S. Chapra Town, District- Saran.

.... Petitioner/s

Versus

1. Sushma Devi Wife of Late Rabindra Singh,
 2. Abhinash Kumar Son of Late Rabindra Singh
 3. Abhishek Kumar Son of Late Rabindra Singh
 4. Archana Kumari Daughter of Late Rabindra Singh
 5. Anjali Kumari Daughter of Late Rabindra Singh
 6. Anamika Kumari Daughter of Late Rabindra Singh
- Respondent nos. 1 to 6 are residents of mohalla: Newaji Tola, P.O. Sanrha,
Town- Chapra, P.S. Chapra Mufassil, District: Saran
7. Krishna Prakash Singh
 8. Om Prakash Singh
 9. Kedar Singh
 10. Kanhaiya Singh
 11. Madan Mohan Singh
- Respondent nos. 7 to 11 are sons of Late Chandrika Singh, resident of mohalla-
Mauna Sahbaz Chak (Patthal Bazar), Town- Chapra, P.O. Chapra, P.S. Chapra
Town, District: Saran
12. Shail Devi Wife of Late Uttim Singh,
 13. Bhupendra Kumar Singh Son of Late Uttim Singh
 14. Satyendra Kumar Singh Son of Late Uttim Singh
- Respondent nos. 12 to 14 are residents of mohalla: Newaji Tola, P.O. Sanrha,
Town- Chapra, P.S. Chapra Mufassil, District: Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Nagendra Rai and Navin Nikunj, Adv.
For the Respondent/s : Dr. Alok Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 02-04-2018

The petitioner is decree holder in Execution Case No. 7
of 2010 pending before Munsif-I, Chhapra. He has filed this
application for setting aside the order dated 6th June 2013 passed by
learned court below whereby and whereunder the proceeding of



execution was stayed till the disposal of Miscellaneous Case No. 9 of 2011.

2. Heard learned counsels for the petitioner and the respondents.

3. The petitioner filed Execution Case No. 7 of 2010 for getting delivery of possession over the suit property on the basis of eviction decree passed in his favour in Eviction Suit No. 207 of 1992. The respondents filed a Miscellaneous Case No. 9 of 2011 for setting the said decree under the provision of Order IX Rule 13 of Code of Civil Procedure and the court below stayed the further proceeding of execution case till the disposal of case filed under Order IX Rule 13 CPC.

4. The learned counsel for the petitioner submits that the petitioner had filed Eviction Suit No. 207 of 1992 against the nine defendants. The respondents 1st set are heirs of Rabindra Singh who was defendant no. 5. In the said eviction suit, Rabindra Singh neither appeared before the court below nor contested the case and so the suit was decreed *ex parte* against him. The said Rabindra Singh died during pendency of the suit and so in view of provision of Order 22 Rule 4 (iv) of Code of Civil Procedure, the petitioner did not implead the heirs of Rabindra Singh as party to the execution case. The petitioner filed the execution case against the remaining defendants



who had contested the case. The heirs of defendant no. 5 had not appeared before the court below. The court below had no jurisdiction to stay the execution case till the disposal of miscellaneous case. The heirs of Rabindra Singh were neither party in execution case nor they have any *locus standi* to oppose the execution case. The contesting defendant has already filed an appeal before the District Judge which is pending for disposal and so the impugned order staying further proceeding till the disposal of miscellaneous case, is not sustainable and is fit to be set aside.

5. The learned counsel for the respondents on the other hand submits that the petitioner is necessary party to the execution case and his prayer has rightly been allowed. The court below while staying the execution case, has rightly observed that if the execution case is not stayed, the very purpose of filing of miscellaneous case would be frustrated and so the impugned order does not require any interference.

6. On perusal of all documents on record, I find that the respondents 1st set are heirs of defendant no. 5 against whom the decree has been passed. The said Rabindra Singh neither appeared in the said suit nor filed any written statement and the case was decreed against him *ex parte*. However the defendants, who contested the case, filed an appeal before the District Judge. None of the



contesting defendant has/had prayed for stay. The respondents 1st set, who are heirs of defendant no. 5, although have filed the Miscellaneous Case No. 9 of 2011 but they have not prayed for stay in the said miscellaneous case. The miscellaneous case is pending since last six years but not a single witness has been examined on behalf of the respondents 1st set i.e. applicant of Miscellaneous Case No. 9 of 2011. The execution case cannot be stayed for indefinite period as per wish of the objector, who is not party of the execution case. The court below has thus committed error in staying the execution case till the disposal of miscellaneous case which was pending in another court.

7. In view of above facts, the impugned order staying the execution case is set aside and this application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07/04/2018
Transmission Date	

