

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1400 of 2016

Veyas Sah Son of late Kanhaiya Sah Resident of village- Kathgharwa, P.O- Semarahi, PS- Jalalpur, District Gopalganj, Presently residing at Village- Hira Pakad, PS- Yadopur, District Gopalganj.

... .. Defendant/Decree Holder/Petitioner
Versus

1. Satya Narain Sah Son of late Bauk Sah Resident of Village- Hajiyapur, Ward No. 16, Presently residing in ward No. 26 PO & PS Gopalganj District Gopalganj.

... ..Plaintiff/Judgment Debtor/Respondent 1st Set

2. Singaldeep Sah Son of late Bhagwati Sah
3. Bir Bahadur Sah Son of late Bhagwati Sah
4. Jangali Sah Son of late Bhagwati Sah

... ..Defendants/Judgment Debtor/Respondents 2nd Set

5. Ramakant Sah Son of late Kanhaiya Sah
6. Panna lal Sah Son of late Kanhaiya Sah
7. Adarlal Sah Son of late Kanhaiya Sah
8. Musamat Shanti Kunwar Wife of late Kanhaiya Sah
9. Manju Devi Daughter of late Kanhaiya Sah
10. Chanda Devi Daughter of late Kanhaiya Sah

... .. Defendants/Decree Holders/Respondents 3rd Set

Appearance :

For the Appellant/s : Mr. Jitendra Kumar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 26-10-2018 Heard both sides.

The petitioner has filed this civil miscellaneous petition against the order dated 18.07.2016, passed by the learned 1st Subordinate Judge, Gopalganj in Execution Case No.227 of 2015 by which the executing court stayed the further proceeding of the execution case till the disposal of the petition filed by the plaintiff-appellant under Order XLI Rule 5 in title appeal preferred against the final decree.

The learned counsel for the petitioner submits that there



is specific provision under Order XLI Rule 5 of the Code of Civil Procedure that the further proceeding of the execution case be stayed, if such petition is filed by the appellant in the appeal but the executing court cannot stay the execution case till the disposal of the appeal or the petition filed by the appellant under Order XLI Rule 5 of the Code of Civil Procedure. I find substance in the submissions of the learned counsel for the petitioner.

The learned counsel for the respondents also submits that the appellate court be directed to dispose of the petition filed by the appellant under Order XLI Rule 5 of the Code of Civil Procedure or to decide the appeal itself expeditiously.

Considering the submissions of both sides, I dispose of this civil miscellaneous petition with a direction to the appellate court to decide the petition of the appellant filed under Order XLI Rule 5 of the Code of Civil Procedure in Title Appeal No.25 of 2015 preferred against the final decree within two months from the date of receipt of this order.

With the aforesaid direction, this civil miscellaneous petition is disposed of.

(Prabhat Kumar Jha, J)

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