

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1244 of 2016

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1. Rajendra Thakur, Son of Deonath Thakur
2. Manorma Devi, Wife of Sri Rajendra Thakur, Daughter of Late Ramvrat Thakur.
Both original residents of Village Chiraura, P.O. Nagwan, P.S. Naubatpur, District-
Patna at present residing at village- Manjhauli, P.O. Anda, Via-Neora, P.S.
Phulwarisharif, District- Patna.

.... Petitioners

Versus

Rajeshwar Thakur, Son of Late Ram Ratan Thakur, Resident of Village- Manjhauli,
P.O. Anda, Via- Neora, P.S. Phulwarisharif, District- Patna.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Kamlesh Kumar Sharma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 25-04-2018

Heard both sides.

The petitioners filed this Civil Miscellaneous petition against the order dated 29.09.2016 passed in Misc. Case No. 01/2016 by learned Munsif 1st, Patna, by which the petition of the petitioners for stay of Execution Case No. 21 of 2015 has been dismissed.

The petitioners are the defendants in Eviction Suit no. 01 of 2013. The plaintiff filed the suit for eviction of the suit premises. The suit was decreed ex-parte. The petitioners being defendants came to know about ex-parte judgment and decree passed in Eviction Suit No. 01 of 2013, filed Misc. Case No. 01 of 2016 for setting aside the ex-parte judgment and decree. The same was admitted. Thereafter the



petitioners filed petition for stay of the execution case. If the execution case is not stayed, the petitioners shall suffer irreparable loss but the learned Munshif 1st, Patna, dismissed the petition of the petitioner, without taking into consideration that once the suit premises is vacated in pursuance of the execution case, the Misc. case would become infructuous.

Learned counsel for the respondent, while supporting the order of learned Munsif, submitted that the petitioners had full knowledge about the pendency of the suit but he intentionally did not appear.

Having considered the submissions of both sides and on perusal of the record, I find that since the petition of the petitioners for setting aside the ex-parte judgment and decree passed in Eviction Suit No. 01 of 2013 is admitted for hearing the justice requires that the execution case pending for execution of ex-parte judgment and decree passed in Eviction Suit No.01 of 2013 should be stayed till disposal of the Misc. Case No.01 of 2016. Therefore, I find that the learned Munsif has committed jurisdictional error in rejecting the petition of the petitioners for stay of Execution Case No. 21 of 2015

Accordingly, the order dated 29.09.2016 passed in Misc. Case No. 01/2016 is set aside.

In the meantime, further proceeding in Execution Case No.



21 of 2015 shall remain stayed till the disposal of the Misc. Case No. 01/2016.

(Prabhat Kumar Jha, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

