

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6150 of 2015

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Shiv Ratan Yadav, Son of Late Chhedhari Yadav, Resident of Village:
Mangalpur Kala, P.S: Nautan, District: West Champaran.

... .. Petitioner/s

Versus

1. Bishwanath Mahto, Son of Late Khedan Mahto, Resident of Village:
Mangalpur kala, P.S. Nautan, District: West Champaran.
2. Ratan Yadav, Son of Late Japat Yadav, Resident of Village: Mangalpur kala,
P.S. Nautan, District: West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyapal Singh, Advocate
For the Respondent/s : Mr. Aditya Nath Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date : 04-12-2018

This application has been filed for quashing the order dated 05.12.2014 passed by learned Munsif, Bettiah, West Champaran in Execution Case No.06 of 2011 whereby and whereunder the petition filed by the petitioner to stay the proceeding of Execution Case No.06 of 2011 was rejected.

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

3. It appears that the respondent Ist party filed Title Suit No.225 of 2012 for declaration of his title over plot no.137 and 135 against the defendant second set. The suit was decreed on contest and the respondent no.1 filed Execution Case No.06 of 2011 for executing the decree. The present petitioner who happens to be the cousin brother of respondent no.2 filed a petition under



Order 21 Rule 97 and 99 read with Section 151 of the Code of Civil Procedure. The said execution case was registered as Miscellaneous Case No.03 of 2014.

4. Learned counsel for the petitioner submitted that the land in question stands recorded as Gairmajarua Malik and the petitioner and his family members purchased the same orally from the landlord Babu Chandma Rai in the year 1973-74. He constructed house and started residing over the same. The petitioner was not impleaded as party to the suit and so the decree is not binding on him.

5. Learned counsel for the respondents on the other hand submits that the petitioner had or has no concern with any portion of disputed land. The contesting respondent has set up the petitioner only to prolong the disposal of execution case. The petitioner has neither title nor possession over the same. The execution case was filed in the year 2011 and the petitioner filed Miscellaneous Case No.03 of 2014 on 30.01.2014 and during this five years, he has not taken step to get the miscellaneous case decided which shows that the respondents by setting the petitioner in order to keep the case pending for indefinite period has filed the present writ application. The learned court below considering both



the facts has rightly refused to stay the proceeding of execution case which was filed in the year 2011.

6. On going through the submission of both the parties and documents on record, I find that the petitioner is cousin of the judgment debtor. He claims title on the basis of oral sale. The court below finding no supporting document or material has refused to stay the execution case. There appears no illegality in the impugned order requiring any interference. As such, this writ application is dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
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