

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17657 of 2014

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Biswas Kumar Son of Late Harun Raznikchak, resident of Saryan Mission Campus,
Ward No. 2, P.S. Gopalganj, District – Gopalganj.

.... Petitioner

Versus

Md. Salim Son of Late Thag Mian, resident of Village - Sahdulepur Pargna Sipah,
P.O. & P.S. Gopalganj, District – Gopalganj.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Krishna Nand Jha, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-08-2018

Petitioner before this court is appellant in Title Appeal No.11 of 1983 pending before the Additional District Judge I, Gopalganj. He has filed this writ application for quashing the order dated 06.09.2014 whereunder his prayer to stay the execution proceeding of Execution Case No.06 of 2005 pending in the court of Munsif I, Gopalganj was rejected.

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

3. It appears that the respondent had filed Title Suit No.78 of 1975 on the file of Munsif, Gopalganj. The said suit was decreed. Against the said judgment and decree, the defendant filed Title Appeal No.11 of 1983 which is pending in the court of 1st Additional



District Judge. The respondent filed Execution Case No.06 of 2005 for delivery of possession over the disputed property. The appellant-petitioner filed a petition under Order 41 Rule 5 of C.P.C. praying therein to stay the proceeding of Execution Case No.06 of 2005 which has been rejected.

4. From the report of learned court below, it appears that the record of trial court was misplaced and now it has been made available in the court of 1st Additional District Judge. The petitioner before this court is admittedly in possession of the suit property. The respondent had filed title suit claiming title on the basis of registered sale deed. The appellant-petitioner, on the other hand, claims title on the basis of oral purchase followed by possession.

5. The learned counsels for both parties submitted that they are willing to get the appeal disposed of without causing any further delay. The suit was filed in the year 1975 and it was decreed in the year 1983. Since filing of the suit, a period of about forty years have already passed over. The court below refused to stay the proceeding in view of provision of restitution of possession as provided under Section 144 of Cr.P.C. The court below, however, has not taken into consideration of the fact that the petitioner is in possession over the suit premises.

6. In the facts and circumstances of the case, the impugned



order refusing to stay the further proceeding of execution case is set aside and this writ application is allowed. The Execution Case No.06 of 2005 is stayed for a period of six months or till the disposal of the appeal, whichever is earlier. The court below, however, is directed to expedite and decide the appeal within six months from the date of this order without giving any unnecessary adjournment to the parties.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.08.2018
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