

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1050 of 2018**

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Ghanshyam Prasad Bhagat, son of Late Shiv Kumar Bhagat, Resident of village & P.O.- Madanpur Bazar P.S.-Araria, District-Araria(Bihar)

.... Petitioner/s

Versus

1. Md. Mushtaque Alam
 2. Afique Alam
 3. Md. Izhar Alam, All sons of Late Abdul Rafique
 4. Bibi Jahan Ara
 5. Bibi Shama Ara, Both daughters of Late Abdul Rafique, All Sl. No.1 to 5 are the resident of village & P.O.-Madanpur Bazar, P.S.-Araria, District-Araria(Bihar)
 6. Bande Lal Sah
 7. Uttim Lal Sah
 8. Mangal Chand Sah
 9. Sitaram Sah
 10. Udai Chand Sah, All are sons of Lil Charan Sah
 11. Sugia Devi
 12. Soshila Devi, Both daughters of Lil Charan Sah
- All Sl. No.6 to 12 are the residents of village & P.O.-Madanpur Bazar, P.S.-Araria, District-Araria

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shashi Nath Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

2 30-08-2018 Heard learned counsel for the petitioner.

The petitioner has filed this civil miscellaneous petition against the order dated 25.05.2018 passed by the learned Munsif, Araria in Title Execution Case No.3 of 1996 by which the petition of the petitioner filed under Order XXI Rule 29 C.P.C. for stay of the execution case has been rejected.

Learned counsel for the petitioner submits that the plaintiff filed Title Suit No.430 of 1989 for declaration of title and



recovery of possession against Ghanshyam Prasad Bhagat and others. The suit was decreed. The decree holder filed Execution Case No.3 of 1996. Ghanshyam Prasad Bhagat, the judgment debtor filed petition under Order XXI Rule 29 for stay of Title Execution Case No.3 of 1996 on the ground that his brother who was not a party in Title Suit No.430 of 1989 has filed Title Suit No.37 of 2012 for setting aside the judgment and decree passed in Title Suit No.430 of 1989 but the learned Munsif has rejected the petition that the petitioner is the judgment debtor and he did not file Title Suit No.37 of 2012. Therefore, at his instance, the execution case cannot be stayed.

I find no illegality in the order as the learned Munsif has rightly held that at the instance of judgment debtor, unless the suit is filed for setting aside the judgment and decree on the ground of fraud and absence of jurisdiction, the execution case cannot be stayed.

Thus, this civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

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