

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1247 of 2016**

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Kanhai Ram

.... Appellant/s

Versus

Mostt. Usha Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shiva Shankar Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

4 25-04-2018

Heard both sides.

This Civil Misc. petition has been filed against the order dated 14.09.2016 passed in Title Appeal No. 54 of 2015 by the learned Additional District Judge-VI, Patna whereby the petition of the petitioner filed under Order 41 Rule 5 read with Section 151 of the C.P.C. for staying the Execution case has been dismissed.

The petitioner is appellant of Title Appeal No. 54 of 2015. The plaintiff preferred the appeal against the order passed in Title Suit No. 11 of 1997 in which the plaintiff sought for declaration of right, title, interest and possession of the schedule-I of the land.

The learned counsel for the petitioner submits that he is ready to argue the appeal within 3-4 months and if the execution case is not stayed the petitioner/ plaintiff suffer



irreparable loss on account of demolition of alleged encroachment portion on which the house of plaintiff also stands.

On the other hand, the learned counsel for the respondents supported the impugned order and submitted that no residential house is situated on the disputed plot but I find that till disposal of the appeal the Execution case No. 172 of 2015 for execution of judgement and decree passed in Title Suit No. 11 of 1997 should be stayed as there is residential house of the petitioner.

Accordingly, till the disposal of appeal, further proceeding in Execution case No. 172 of 2015 is stayed and the order dated 14.09.2016 is set aside. This Civil Misc. petition is allowed.

The learned Additional District Judge-VI, Patna is directed to dispose of the appeal within four months from the date of receipt of this order without giving any adjournment to either side.

(Prabhat Kumar Jha, J)

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