

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.321 of 2018

1. Bhagmani Devi, Wife of Jaynandan Singh, resident of Village-Panchkhanda, P.S. Masharakh, District Saran at Chapra, presently residing at Salempur Chapra, P.O. Chapra, P.S. Town Thana, District- Saran at Chapra.
2. Anandi Devi, Wife of Ram Bihari Pandey, resident of Village-Saraibaksh, P.S. Bheldi, District Saran, presently residing at Salempur Chapra, P.S. Town Thana, District- Saran at Chapra.

... .. Appellant/s

Versus

1. Musmat Asharfi Devi, Wife of Late Prakash Mishra.
2. Sunil Mishra
3. Ranjit Mishra
4. Ganesh Mishra All Sons of Late Prakash Mishra.
5. Anita Mishra
6. Munni Mishra
7. Puja Mishra All Daughters of Late Prakash Mishra.
8. Musmat Geeta Mishra, Wife of Late Awadh Nath Mishra.
9. Manish Mishra
10. Mukesh Mishra Both Sons of Late Awadh Nath Mishra.
11. Pinki Mishra
12. Mala Mishra
13. Vina Mishra, All Daughters of Late Awadh Nath Mishra.
14. Nilu Mishra Wife of Late Shashinath Mishra.
15. Shesh Nath Mishra, Son of Late Bhagwat Mishra. All resident of Village-Mauza Lakhana, Pargana Goa, P.S. Amnour, District- Saran.
16. Shailesh Kumar Singh
17. Rajiv Kumar Singh
18. Prakash Ranjan All Sons of Sri Prahalad Singh.
19. Purnima Singh, Daughter of Sri Prahalad Singh.
20. Prahalad Singh, Son of Late Daroga Singh. All residents of Village- Umadha, P.O. Fakuli, P.S. Chapra Muffasil, District Saran at Chapra, presently residing at Mohalla Salempur, near Ganga Singh College, P.S. Chapra Town, District Saran at Chapra.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Akhileshwar Pandey
For the Respondents 16 to 20: Mr. M. N. Parbat, Sr. advocate
Mr. Ved Prakash Srivastava

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

5 06-12-2018

Heard both sides.

The petitioners have filed this Civil Misc. petition



against the order dated 06.02.2018 passed by learned Additional District Judge-VI, Saran at Chapra in Title Appeal No. 52 of 2017 by which the petition of the petitioners filed under Order 41 Rule 5 of the C.P.C. for staying the execution case No. 2 of 2017 pending in the court of Sub Judge-XII, Saran at Chapra has been rejected.

The petitioners are the plaintiffs. The petitioners filed the suit for partition of the suit property. The respondent Nos. 16 to 20 filed counter claim. The suit was dismissed and counter claim was allowed by a common judgement and decree. The plaintiffs filed appeal being Title Appeal No. 52 of 2017. For stay of the execution case the petitioners filed petition under Order 41 Rule 5 of the C.P.C. but the same was rejected on the ground that the decree holder cannot be restrained from using the usu fructs of the judgement and decree.

The learned counsel for the petitioners submits that there is a finding that the petitioners are in possession of the land but the petitioners have been directed to hand over the possession of the part of residential house to defendant Nos. 6 and 7 within three months. Therefore, it is admitted that petitioners are in possession of the residential house. There is sufficient cause for staying the execution case. If the execution



proceeding is not stayed the petitioners shall be driven out from the residential house but Mr. M. N. Parbat, learned counsel for the respondent Nos. 16 to 20 submits that the plaintiffs are entitled to only 3 dhurs of land in their share and they have forcibly occupied the entire residential house purchased earlier in point of time by respondents.

Be that as it may, it is evident from the facts that plaintiffs are in possession of the residential house and if the execution proceeding is not stayed the petitioners would suffer irreparable loss as they would be driven out from the house in which they are residing.

In this view of the fact, the order dated 06.02.2018 passed by learned Additional District Judge-VI, Saran at Chapra in Title Appeal No. 52 of 2017 is set aside. This Civil Misc petition is allowed and further proceeding in Execution case No. 2 of 2017 pending in the court of Sub Judge-XII, Saran at Chapra is stayed.

The learned Additional District Judge-VI, Saran at Chapra is directed to dispose of the appeal itself within six months from the date of receipt of this order after hearing both sides, in accordance with law.

BKS/-

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(Prabhat Kumar Jha, J)

