

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.86 of 2018

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1. Shafeena Khatoon @ Munni W/o Late Asafaque Ahmad
 2. Faijan Ali, Son of Late Asafaque Ahmad
 3. Saif Ali, Son of Late Asafaque Ahmad
 4. Gulabasa Praveen, Daughter of Late Asafaque Ahmad
 5. Saniya Praveen, Daughter of Late Asafaque Ahmad (petitioner 2 to 4 are Minors represented through their Mother, Petitioner no 1) All are Resident of Mohalla-Sherganj, Police Station-Town Sasaram, District-Rohtas

.... Petitioners

Versus

1. Habibunisha W/o Late Mohammed Sayeed, Resident of Mohalla- Sherganj, Police Station Sasaram, District-Rohtas (Defendant 1st set)
2. Iftexhar Hussain @ Takku Bhai, S/o Israr Hussain
3. Imtiyaz Hussain Son of Late Khurshida Khatoon @ Munni
4. Neyaz Hussain, Son of Late Khurshida Khatoon @ Munni
5. Ekbal Hussain, Son of Late Khurshida Khatoon @ Munni
6. Zakir Hussain, Son of Late Khurshida Khatoon @ Munni
7. Mushtari Hussain, Son of Late Khurshida Khatoon @ Munni
8. Ajmeri Khatoon, Daughter of Late Khurshida Khatoon @ Munni All Resident of Mohalla-Karan Sarai, Police Station-Town Sasaram, District-Rohtas.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Kaushal Kishor

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date: 12-03-2018

Heard both sides.

The petitioners being aggrieved by the order dated 15.07.2017, passed in Execution Case No. 01/2009, and the order dated 13.11.2017, passed in Civil Misc. Appeal No.16/2017 by learned District Judge, Rohtas, Sasaram, confirming the order of the Sub Judge-IV, Rohtas, Sasaram, filed this Civil Miscellaneous petition for stay of the Execution petition.

Mr. Shrawan Kumar, learned Senior counsel for the



petitioners submitted that the respondents filed suit for Specific Performance of Contract against the husband of the petitioner no.1 and the suit was decreed. During the pendency of the execution case, the husband of the petitioner no.1 died. The petitioner was substituted but she did not know the facts that half of the subject matter of the suit was gifted to her by her father-in-law and the rest of the land she inherited. The petitioners filed Title suit No.943 of 2013, and thereafter, she also filed a petition under 39 Rule 1 & 2 read with Section 151 of C.P.C. to stay the further proceeding of the execution case, in view of the pendency of Title Suit filed by the petitioners but I find no force in submission of the learned counsel for the petitioners on the simple ground that the petition under Order 39 Rule 1 & 2 C.P.C. is not meant for staying of the execution case, and accordingly, I do not find any error or illegality in the order impugned.

Thus, the Civil Miscellaneous petition is dismissed. The petitioners, if so advised, may file petition under appropriate provision before the court, in which the suit is pending for stay of the execution case.

(Prabhat Kumar Jha, J.)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

