

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1776 of 2017

1. Kedar Prasad Singh.
2. Chandrashekhar Singh. Both Sons of Late Mahabir Singh and Both Resident of Village-Jitwarpur Chauth (Bir Tole), P.S. & District-Samastipur.
3. Raj Kumari Devi, Wife of Sri Suresh Prasad Singh, Daughter of Late Mahabir Singh, Resident of Village & P.O.-Chiranjivipur, P.S.-Bachawara, District-Begusarai.
4. Smt. Uma Devi, Wife of Sri Rajendra Mahto, Daughter of Late Mahabir Singh, Resident of Village & P.O.-Harpuraloth, P.S. Mushrigharari, District-Samastipur.
5. Manju Kumari, Wife of Rambaran Mehta, daughter of Late Mahabir Singh, Resident of Village & P.O.-Adharpur, P.S.-Samastipur Muffasil, District-Samastipur.
6. Kumudini, Wife of Sri Ramnaresh Singh, Resident of Village-illage & P.O.-Gundwaha, P.S.-Bibhutipur, District-samastipur.

... .. Respondents/Petitioners

Versus

1. Ram Prasad Rai, Son of Late Yadu Rai.
2. Shankar Rai
3. Raudi Rai Both Sons of Ram Prasad Rai
4. Kaushlaya Devi, Wife of Ram Prasad Rai. All Resident of Village-Jitwarpur Nizamat, P.S. & District-Samastipur.

... .. Appellants/Respondents

Appearance :

For the Petitioners	:	Mr. Shashi Shekhar Dwivedi, Sr. Advocate Mr. Parth Gaurav, Advocate
For the Respondents	:	Mr. Choudhary Shyam Nandan, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 17-12-2018 Heard Mr. S.S. Dwivedi, the learned senior counsel appearing on behalf of the petitioners and Mr. Choudhary Shyam Nandan, the learned counsel for the respondents.

The petitioners have filed this civil miscellaneous petition against the order dated 01.07.2017, passed by learned 3rd Additional District Judge, Samastipur in Title Appeal No.83 of 2010 by which the learned Additional District Judge stayed



the execution proceeding of Execution Case No.13 of 2010.

It is admitted fact that the petitioner filed the suit for declaration of title and removal of encroachment from Plots No.1134 and 1135. The suit was decreed. The defendant filed Title Appeal No.83 of 2010. During the pendency of the appeal, the decree holder filed Execution Case No.13 of 2010 and petitioners-appellants filed petition for stay of the execution case. The learned Additional District Judge stayed the further proceeding in execution case on the ground that the appeal is required to be heard on merit and till then the further proceeding of the execution case should be stayed.

It is submitted that the land is purely agricultural land but Mr. Choudhary Shyam Nandan, the learned counsel for the respondents drew my attention towards the judgment and decree passed by the court below in which it is stated that the defendants are directed to hand over the possession of the encroached land on which cattle shade and other structures are standing.

Taking into consideration the facts that on the disputed land some structures such as cattle shades are standing, I do not find any illegality in the order impugned staying the further proceeding of Execution Case No.13 of 2010.



Accordingly, this civil miscellaneous petition is dismissed but at the same time I direct the learned 3rd Additional District Judge, Samastipur to hear the appeal and dispose of the same within four months from the date of receipt of this order. If the appellants fail to conclude the argument within four months, the stay order granted shall be vacated.

(Prabhat Kumar Jha, J)

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