

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.1876 of 2017**

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1. Shiv Parshan Prasad @ Shio Parsan Prasad
2. Hazari Prasad Both Sons of Late Ram Subhag Ram, Resident of Village-Motha, P.O. Motha, P.S. Karakat, District-Rohtas, at Present resident of Prasad Bhawan, Mohalla Lahbani Dhैया, P.O. I.M.S. Dhanbad, P.S. Dhanbad, District-Dhanbad, Jharkhand.

... .. Petitioners

Versus

Janardan Prasad, Son of Ram Subhag Ram, Resident of Village-Motha, P.O. Motha, P.S. Karakat, District-Rohtas, at Present resident of Prasad Bhawan, Mohalla Lahbani Dhैया, P.O. I.M.S. Dhanbad, P.S. Dhanbad, District-Dhanbad, Jharkhand.

... .. Respondent

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**Appearance :**

For the Appellant/s : Mr. Akhouri Vipin Bihari Shrivastava  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA  
ORAL JUDGMENT**

**Date : 25-09-2018**

Heard both sides.

2. The petitioners have filed this civil miscellaneous petition against the order dated 18.07.2017, passed by the learned District Judge, Rohtas at Sasaram in Title Appeal No.04 of 2017 by which the learned District Judge dismissed the petition of the petitioners for staying the Execution Case No.22 of 2016.

3. Petitioners are the plaintiffs. The petitioners filed Title Suit No.729 of 2009 for partition of their 1/3rd share in Schedule-'Ka' property and the defendant admitted the averment made in the plaint. On the basis of the pleadings of the parties, the



suit was decreed under Order XII Rule 6 of the CPC and decided that the plaintiffs and defendant each are entitled to get 1/3 share in the suit property. The defendant filed petition for preparation of final decree. Pleader Commissioner was appointed but the Advocate Pleader Commissioner did not issue any notice to the plaintiffs and the report was prepared in absence of the petitioners although the Pleader Commissioner wrote in his report that both the sides were present. It is pointed out that the report does not bear the signature of the plaintiffs. On such Pleader Commissioner report, the final decree was prepared. The petitioners filed Title Appeal No.04 of 2017 against the final decree and also file petition for stay of the execution case bearing Execution Case No.22 of 2016. The appellants-petitioners raised objection that the Pleader Commissioner prepared the report in absence of the petitioners and allotted valuable agricultural as well as residential lands in the share of the defendant but the learned District Judge rejected the petition for stay the execution on the ground that the petitioners did not file any appeal against the order of preliminary decree. Against that order, the petitioners filed this civil miscellaneous petition.

4. Learned counsel for the petitioners submits that let the appeal be heard expeditiously and the execution proceeding be



stayed since the Pleader Commissioner allotted the 1/3 valuable lands agricultural as well as residential in the share of the defendant.

5. On the other hand, the learned counsel for the defendant-respondent submits that there is a Division Bench judgment of this Court that so far as the agricultural land is concerned, there shall be no stay of the execution case filed in pursuance of the final decree but I find that since the petitioners objected the Pleader Commissioner report, on the basis of which final decree was prepared, that the Pleader Commissioner did not inform the plaintiffs at the time of measurement and separation of *Takhta* and the Pleader Commissioner in collusion with the sole defendant allotted valuable lands in the share of the defendant, therefore, I find that the learned District Judge has committed jurisdictional error while dismissing the petition of the petitioners for stay of the Execution Case No.22 of 2016.

6. Accordingly, the order dated 18.07.2017, passed by the learned District Judge, Rohtas at Sasaram in Title Appeal No.04 of 2017 is set aside. This civil miscellaneous petition is allowed with a direction to the District Judge, Rohtas at Sasaram or the court in seisin of Title Appeal No.04 of 2017 to hear the



appeal and dispose of the appeal within three months from the date of receipt of this order.

7. During pendency of the Title Appeal No.04 of 2017, further proceeding in Execution Case No.22 of 2016, pending in the court of the learned Sub-Judge-I, Bikramganj, Rohtas shall remain stayed.

8. This civil miscellaneous petition is accordingly, allowed.

**(Prabhat Kumar Jha, J)**

S.KUMAR/-

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