

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.92 of 2020

1. Indra Devi W/o Sattan Yadav Resident of Village and P.O. Baluwa Rampurwa, Police Station-Bairiya, District-West Champaran, at Present residing in I.T.I. Colony, Jai Prakash Nagar, Bettiah, P.O. and P.S.-Bettiah (M) District-West Champaran.
2. Sony Sourabh, D/o Sattan Yadav. Resident of Village and P.O. Baluwa Rampurwa, Police Station-Bairiya, District-West Champaran, at Present residing in I.T.I. Colony, Jai Prakash Nagar, Bettiah, P.O. and P.S.-Bettiah (M) District-West Champaran.
3. Lucky Bijeta, Son of Sattan Yadav Resident of Village and P.O. Baluwa Rampurwa, Police Station-Bairiya, District-West Champaran, at Present residing in I.T.I. Colony, Jai Prakash Nagar, Bettiah, P.O. and P.S.-Bettiah (M) District-West Champaran.
4. Bhaskar Kumar Yadav @ Bhaskar Kumar Son of Sattan Yadav. Resident of Village and P.O. Baluwa Rampurwa, Police Station-Bairiya, District-West Champaran, at Present residing in I.T.I. Colony, Jai Prakash Nagar, Bettiah, P.O. and P.S.-Bettiah (M) District-West Champaran.
5. Anand Kumar Son of Sattan Yadav Resident of Village and P.O. Baluwa Rampurwa, Police Station-Bairiya, District-West Champaran, at Present residing in I.T.I. Colony, Jai Prakash Nagar, Bettiah, P.O. and P.S.-Bettiah (M) District-West Champaran.

... .. Petitioner/s

Versus

1. Prakash Kumar Tiberewal Son of Late Kailash Chand Tiberewal. Resident of Mohalla-Belbanwa, Station Road, Motihari, P.O. and P.S.-Motihai (Town) District-East Champaran.
2. Deepak Kumar Tiberewal Son of Late Kailash Chand Tiberewal. Resident of Mohalla-Belbanwa, Station Road, Motihari, P.O. and P.S.-Motihai (Town) District-East Champaran.
3. Bhanu Tiberewal Son of Late Kailash Chand Tiberewal Resident of Mohalla-Belbanwa, Station Road, Motihari, P.O. and P.S.-Motihai (Town) District-East Champaran.
4. Smt. Bhawani Devi W/o Late Yugal Kishore Tiberewal. Resident of Mohalla-Belbanwa, Station Road, Motihari, P.O. and P.S.-Motihai (Town) District-East Champaran.
5. Rajendra Prasad Tiberewal Son of Late Yugal Kishore Tiberewal Resident of Mohalla-Belbanwa, Station Road, Motihari, P.O. and P.S.-Motihai (Town) District-East Champaran.
6. Niranjana Kumar Tiberewal Son of Late Yugal Kishore Tiberewal Resident of Mohalla-Belbanwa, Station Road, Motihari, P.O. and P.S.-Motihai (Town) District-East Champaran.
7. Santosh Kumar Tiberewal. Son of Late Babu Lal Tiberewal Resident of Mohalla-Belbanwa, Station Road, Motihari, P.O. and P.S.-Motihai (Town) District-East Champaran.



8. Anand Kumar Tiberewal Son of Late Babu Lal Tiberewal. Resident of Mohalla-Belbanwa, Station Road, Motihari, P.O. and P.S.-Motihai (Town) District-East Champaran.
9. Prem Kumar Tiberewal S/o Late Babu Lal Tiberewal Resident of Mohalla-Belbanwa, Station Road, Motihari, P.O. and P.S.-Motihai (Town) District-East Champaran.
10. Prem Kumar Tiberewal @ Lalu Babu Resident of Mohalla-Belbanwa, Station Road, Motihari, P.O. and P.S.-Motihai (Town) District-East Champaran.
11. Smt. Bimla Devi W/o Late Raghunath Prasad Tiberewal Resident of Mohalla-Belbanwa, Station Road, Motihari, P.O. and P.S.-Motihai (Town) District-East Champaran.
12. Rajesh Kumar Tiberewal Son of Late Raghunath Prasad Tiberewal. Resident of Mohalla-Belbanwa, Station Road, Motihari, P.O. and P.S.-Motihai (Town) District-East Champaran.
13. Gopal Tiberewal Son of Late Raghunath Prasad Tiberewal Resident of Mohalla-Lal Bazar, Bettiah, P.O. and P.S.-Bettiah (Town) District-West Champaran.
14. Omnath Tiberewal Son of Late Bishwanath Tiberewal Resident of Mohalla-Lal Bazar, Bettiah, P.O. and P.S.-Bettiah (Town) District-West Champaran.
15. Susila Devi W/o Late Rampal Jhunjunwala. Resident of Mohalla-Gullu Bara, Darbhanga, P.O. P.S. and District-Darbhanga.
16. Raj Kumar Jhunjunwala Son of Late Rampal Jhunjunwala Resident of Mohalla-Gullu Bara, Darbhanga, P.O. P.S. and District-Darbhanga.
17. Laxami Narayan Jhubjunwala Son of Late Rampal Jhunjunwala Resident of Mohalla-Gullu Bara, Darbhanga, P.O. P.S. and District-Darbhanga.
18. Anand Kumar Jhunjunwala Son of Late Rampal Jhunjunwala Resident of Mohalla-Gullu Bara, Darbhanga, P.O. P.S. and District-Darbhanga.
19. Poonam Devi D/o Late Rampal Jhunjunwala Resident of Mohalla-Gullu Bara, Darbhanga, P.O. P.S. and District-Darbhanga.
20. Parwati Devi W/o Late Pasupati Nath Khetan. Resident of Village-Belbanwa, Station Road Motihari, P.O. and P.S.-Motihari (Town) District-East Champaran.
21. Prabhan Kumar Khetan Son of Late Pashupati Nath Khetan Resident of Village-Belbanwa, Station Road Motihari, P.O. and P.S.-Motihari (Town) District-East Champaran.
22. Dr. Orakash Khetan Son of Late Pashupati Nath Khetan Resident of Village-Belbanwa, Station Road Motihari, P.O. and P.S.-Motihari (Town) District-East Champaran.
23. Prabhakar Khetan Son of Late Pashupati Nath Khetan. Resident of Village-Belbanwa, Station Road Motihari, P.O. and P.S.-Motihari (Town) District-East Champaran.
24. Bijay Kumar Yadav Son of Late Lachhan Yadav Resident of Village-Parbatia Tola, Bettiah, P.O. and P.S. Bettiah (Town)
25. Amar Yadav Son of Late Bhagar Yadav Resident of Mohalla Ganj No.1,



Santghat, Bettiah, P.O. and P.S. Bettiah (Town), District-West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Akhileshwar Kumar Shrivastva,Adv

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 25-02-2020

Heard learned counsel for the petitioners.

2. The present petition has been filed “*against the order dated 18.11.2019 passed by the learned Additional District and Sessions Judge Vth, Bettiah, District West Champaran, (the name of the Presiding Officer is not visible) passed in T.A. No. 20/13, CIS T.A. 331/13 and its analogous appeal (as contained in Annexure-3) whereby and whereunder, the learned lower appellate Court has refused the prayer of the petitioners under Section 151 of the C.P.C., under which, the petitioners prayed to recall the order dated 17.10.2016 by which, the order of stay dated 27.08.2014 passed under Order 41 Rule 5 of the CPC was dismissed as not pressed.*”

3. Learned counsel for the defendant(2nd Set)/ appellant/petitioners submits that the learned appellate Court ought not to have dismissed their prayer for recall of the order dated 17.10.2016 by which their application dated 27.08.2014 filed under Order XLI Rule 5 CPC for stay of execution of the decree had been dismissed. It is submitted that the defendant(2nd Set)/ appellant/petitioners are in possession and the suit had been filed for recovery of possession. Dispossession at this stage during pendency of the appeal would cause great hardship to the defendant(2nd Set)/ appellant/petitioners.

4. Having heard learned counsel for the defendant(2nd Set)/ appellant/petitioners and on consideration of the materials on record, this Court is not inclined to interfere in the matter. By



order dated 08.09.2014 the learned appellate Court had granted interim stay of execution proceeding until filing of rejoinder, which was filed on 15.01.2015 by the respondents of the appeal. It appears from the impugned order dated 18.11.2019 that thereafter, the petitioner did not press the application and finally on 17.10.2016, the application was dismissed when none appeared on behalf of the defendant(2nd Set)/appellant/petitioners to press the application despite notice. It further appears that since 06.06.2018 the appeal has been pending for final arguments but the petitioner did not take proper steps for its conclusion. In the above circumstances, the learned appellate Court did not deem it a fit case to allow the defendant(2nd Set)/ appellant/petitioners' application dated 28.11.2016 and 06.08.2019 for recall of the order dated 17.10.2016.

5. This Court finds no illegality, infirmity or error of jurisdiction in the impugned order dated 17.10.2016. The petition stands dismissed with the observation that the learned appellate Court may take up the appeal of the defendant(2nd Set)/appellant/petitioners' for expeditious disposal preferably within a period of two months hereof.

(Vikash Jain, J)

Chandran/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2020
Transmission Date	NA

