

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.155 of 2021**

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Ramawatar Prasad @ Ramotar Prasad, son of late Garho Mahto, resident of
Village-Charuipar, P.S.-Noorsarai, District-Nalanda.

... .. Petitioner/s

Versus

1. Satyadev Singh, son of late Babu Baban Singh, resident of Village-Maner,
P.S.-Maner, District-Patna.
2. Sunita Devi, Wife of Ayodhya Gope, resident of Village-Chairuipar, P.S.-
Noorsarai, District-Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.K. Sinha, Sr. Adv. Mr. Alexander Ashok, Adv. Mr. Abhinay Raj, Adv.
For the Respondent/s	:	Mr. H.P Singh, Sr. Adv. Mr. Anil Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

9 01-11-2022 Heard Mr. D. K. Sinha, learned senior counsel for the

petitioner and Mr. H. P . Singh, learned senior counsel for the

respondents.

2. Petitioner is a plaintiff in a Title Suit bearing No.
102 of 2013 seeking specific performance of the agreement for
sale. In the said suit the respondent was impleaded as a party
being the subsequent purchaser of the land in question and the
summon was issued to the defendant-respondent, but he did not
appear and participate in the suit and accordingly the suit was
decreed on contest by Respondent No. 1 and an ex-parte against
Respondent No. 2 appearing before this Court.

3. A petition under Order 9 Rule 13 was filed by



Respondent No. 2 before the trial court which was registered as Miscellaneous Case No. 1 of 2018 contending therein that the summon was not duly/properly served upon her and she did not get the opportunity to contest the suit. The further case of the Respondent No. 2 is that after purchase of the suit land in the year 2015, the Respondent No. 2 has been put in possession of the suit property. The miscellaneous case is still pending for adjudication.

4. By the impugned order, the learned court below has stayed the execution of the decree till the disposal of the miscellaneous case bearing no. 1 of 2018 which has been impugned before this Court.

5. Learned senior counsel for the petitioner submits that the impugned order has been passed by the court below in the Title Suit No. 102 of 2013 which is without jurisdiction inasmuch as after passing of the decree the court becomes *functus officio* and cannot pass subsequent order of stay of the execution based upon the petition filed by Respondent No. 2.

6. Learned counsel further disputes that the possession of the suit property has not been handed over in favour of Respondent No. 2 by Respondent No. 1 and by virtue of the order passed in the execution case, the sale deed has been



executed in favour of the petitioner/plaintiff on 20.03.2018 by Nazir of the court and only delivery of possession has to be ordered by the executing court on the basis of the sale deed executed in favour of the decree holder.

7. On the other hand, learned Senior counsel for the Respondent No. 2 submits that the same court is in siesin with the execution case as well as the miscellaneous case and has also disposed the Title Suit No. 102 of 2013.

8. Therefore, the submission is that the cause title of the case may have been given as Title Suit No.102 of 2013 in the impugned order but the fact of the matter is that the stay of the execution till the disposal of Miscellaneous Case No. 1 of 2018 has been passed by the executing court based upon the petition filed by the Respondent No. 2 for stay of the execution till the disposal of the miscellaneous case.

9. I have heard learned counsel for the parties. It appears that there is no dispute that the Miscellaneous Case No. 1 of 2018 is pending which has been filed by Respondent No. 2 for setting aside ex-parte decree and the execution case is also pending filed by the petitioner/plaintiff for delivery of possession. The Respondent No. 2 is claiming that she is in possession of the suit property whereas the petitioner is



claiming that Respondent No.2 was not handed over the possession by Respondent No. 1 who is a judgment debtor.

10. Be that as it may, the fact of the matter is that miscellaneous case filed by the Respondent No. 2 is still pending and if delivery of the possession is given to the petitioner/plaintiff, the Respondent No. 2 shall suffer a serious prejudice.

11. Accordingly, I do not find any material illegality in the impugned order passed by the concerned court in granting limited stay till the disposal of the Miscellaneous Case No. 1 of 2018. Learned concerned court is directed to dispose the Miscellaneous Case expeditiously within a period of three months.

12. The petition, accordingly, stands disposed of.

(Anil Kumar Sinha, J)

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