

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1383 of 2018

- 1.1. Lakru Khan, Son of Late Serajul Khan, Resident of Village - Fulkaul, Post Office- Meghwal Mathia, P.S. - Ram Nagar, District- West Champaran.
- 1.2. Jahangir Khan, Son of Late Serajul Khan, Resident of Village - Fulkaul, Post Office- Meghwal Mathia, P.S. - Ram Nagar, District- West Champaran.

... .. Petitioner/s

Versus

1. Suresh Sah Son of Late Rang Lal Sah, Resident of Village - Fulkaul, Post Office - Meghwal Mathia, Police Station - Ram Nagar, District- West Champaran.
2. Sohan Sah, Son of Late Rang Lal Sah, Resident of Village - Fulkaul, Post Office - Meghwal Mathia, Police Station - Ram Nagar, District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Syed Firoz Reza Mr. Shahrukh Shiddiqui Mr. Azhar Hussain
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

10 29-08-2023 The Interlutory Application filed by the petitioners
for substitution of Respondent No. 01 is allowed.

2. The substituted heirs of the Respondent No. 01 are
being represented by the learned senior counsel for the
respondents.

3. Heard learned counsel for the petitioners and
learned Senior counsel for the respondents.

4. This application has been filed for quashing the
order dated 18.08.2018 passed by learned Sub-Judge-II, Bagaha,
West Champaran in Execution Case No. 05 of 2013 whereby the



learned Judge has restored Misc. Case No. 02 of 2016 (arising out of Execution Case No. 05 of 2013) filed by the petitioner under Order 21, Rule 97 of the C.P.C. and by the second part of said order directed for issuance of delivery of possession in Execution Case No. 05 of 2013.

5. The petitioners are aggrieved by the second part of the order by which direction has been issued for issuance of direction for delivery of possession in Execution Case No. 05 of 2013.

6. The petitioners, pursuant to the order dated 23.08.2017 passed in Civil Misc. No. 1225 of 2016 has got his Miscellaneous case revived which was filed in the Court below under Order 21 Rule 97.

7. The Misc. Case has been directed to be heard by the order dated 23.08.2017. While passing the order dated 23.08.2017, this Court had directed for expeditious disposal of the Execution Case No. 05 of 2013.

8. The learned counsel for the petitioners has submitted that, until and unless the case filed by the petitioners is disposed of, the execution case should not proceed and it should be stayed by this Court and the impugned order should be partly set aside by which a direction for issuance of delivery



of possession is issued.

9. Learned counsel appearing for the decree holders who have been successful till Hon'ble Supreme Court submits that this Court has directed for expeditious disposal of the execution proceeding and the decree holders are waiting for about 25 years as their suit is of the year 2000 and even after they are successful till Hon'ble Supreme Court, they are unable to enjoy the fruits of the decree.

10. Learned counsel for the petitioners has submitted that it is an admitted position that the land in dispute in the Misc. Case is an agricultural land and the general practice is that the decree is not stayed with regard to the agricultural land and subsequently if the petitioner succeeds in the Misc. Case then the agricultural land can be restored to the petitioner.

11. Learned senior counsel for the respondents has relied upon a Judgment of this Court in the Case of ***Most. Ram Kali Devi Vs. Jagdish Prasad Yadav reported in 2001 Volume 04 PLJR Page 273*** and has submitted that the consistent view of this Court is that the Execution Proceedings with regard to the agricultural lands are never stayed.

12. I have heard and considered the submission of the parties.



13. From the averments made in Para 14 of the Misc. Petition, it is an admitted position that the land in question is an agricultural land and it is also an admitted position that the decree holders has succeeded till Hon'ble Apex Court.

14. Merely because the petitioner has filed a Misc. Case under order 21 Rule 97, the same shall not be operate as an automatic injunction against the execution case pending in the Court below.

15. In my opinion, as the land in question is an agricultural land, the execution proceedings with regard to the suit property should not be stayed and the delivery of possession should be given to the decree holder.

16. As and when the petitioner succeeds in the Misc. Case finally, he will have the option of restitution of suit property in accordance with law.

17. In view of the above, this application is allowed.

18. Accordingly, the order dated 18.08.2018 passed by learned Sub-Judge-II, Bagaha, West Champaran in Execution Case No. 05 of 2013 is hereby quashed in the interest of justice.

(Sandeep Kumar, J)

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