

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1385 of 2024**

Mohan Singh Son of - Late Sachchidanand Singh, Resident of village -
Baniapur, P.S. Baniapur, District- Saran.

... .. Petitioner/s

Versus

1. Madan Singh Son of Late Kapildeo Singh, Resident of Village- Baniapur,
P.S.- Baniapur, District- Saran.
2. Bhuwaneshwar Prasad @ Bhuwneshwar Prasad, Son of Late Jagat Shah,
Resident of Village - Baniapur, P.S. Baniapur, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Arun Kumar Rai, Advocate

For the Respondent/s : Mr.

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

Date : 17-12-2024

Record taken up on mentioning being made on
behalf of the petitioner.

2. Heard learned counsel for the petitioner and I
intend to dispose of the petition at the stage of admission itself.

3. The petitioner is aggrieved by order dated
19.10.2024 passed by learned Civil Judge IVth, Saran at
Chapra in Execution Case No. 07 of 2012, whereby and
whereunder the learned executing court rejected the
application dated 05.10.2024 filed by the petitioner under
Section 151 of the Code of Civil Procedure (in short 'the



Code’).

4. Learned counsel for the petitioner submits that the petitioner has filed application on 05.10.2024 before the learned executing court seeking stay on the execution proceeding ordering with delivery of possession till disposal of Civil Miscellaneous No. 1202 of 2023. Learned counsel further submits that the impugned order has not been passed considering the facts and circumstances as the petitioner had earlier filed an application under Order 21 Rules 97, 98, 99, 100 of the Code which was dismissed by the learned executing court vide order dated 21.08.2023. Same has been challenged before this Court by filing Civil Miscellaneous No. 1202 of 2023 which is still pending. When the proceeding for delivery of possession started, the petitioner filed an application under Section 151 of the Code for stay on the execution proceeding on the ground the Civil Miscellaneous petition is still pending. However, the learned trial court did not consider this fact and rejected the application. Learned counsel further submits that the delivery of possession is being sought on Plot No. 1121 whereas the plot number of the land of the petitioner is 1120. Still the delivery of possession is being affected on Plot No. as well.



5. Perused the record.

6. On perusal of the record it is very much clear that the petitioner moved before the learned executing court by filing a petition under Rule 21 Rules 97, 98, 99, 100 read with Section 151 of the Code which has been dismissed with cost by the learned executing court, against which the petitioner has approached this Court by filing Civil Miscellaneous petition. The present petition has been filed when the application filed under Section 151 of the Code seeking stay on the execution proceeding along with delivery of possession has been sought by the petitioner and the same has been rejected. Perusal of impugned order dated 19.10.2024 does not show any irregularity, infirmity or illegality. Once the learned executing court considered the merits of the objection and rejected the same and when against this order there is no stay, the learned executing court cannot stay the execution proceeding on saying of the petitioner. It is trite to remind that the stay of the execution proceeding would be granted by the appellate court and in exceptional cases by the executing court when objections are raised and the same remains pending disposal but not otherwise. Therefore, I am of the considered opinion that the petitioner has failed to make out any case and the



impugned order does not need any interference by this Court.

Hence, the present petition is without merit and the same is dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.12.2024
Transmission Date	NA

