

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.84 of 2025

1. Kameshwar Yadav, Son of Late Dhaneshwari Mandal, Resident of Village- Manikpur, P.O- Manikpur, P.S. - Madhepura and District - Madhepura.
2. Surendra Prasad Yadav, Son of Late Dhaneshwari Mandal, Resident of Village- Manikpur, P.O- Manikpur, P.S. - Madhepura and District - Madhepura.
3. Rajendra Yadav, Son of Late Dhaneshwari Mandal, Resident of Village- Manikpur, P.O- Manikpur, P.S. - Madhepura and District - Madhepura.
4. Ashok Yadav @ Paltu Yadav, Son of Late Dhaneshwari Mandal, Resident of Village- Manikpur, P.O- Manikpur, P.S. - Madhepura and District - Madhepura.
5. Kuleshwar Yadav, Son of Late Dhaneshwari Mandal, Resident of Village- Manikpur, P.O- Manikpur, P.S. - Madhepura and District - Madhepura.
6. Deepak Kumar S/o Late Dinesh Yadav, Resident of Village- Manikpur, P.O- Manikpur, P.S. - Madhepura and District - Madhepura.
7. Most. Shanti Devi, W/o Late Dinesh Yadav, Resident of Village- Manikpur, P.O- Manikpur, P.S. - Madhepura and District - Madhepura.

... .. Petitioner/s

Versus

1. State of Bihar through Collector, Madhepura, Resident of Madhepura, P.O., P.S. and District - Madhepura.
2. District Deputy Registrar, Madhepura.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Parth Gaurav, Advocate Mr. Akash Raj, Advocate Mr. Arun Bharti, Advocate Mr. Rahul Kumar, Advocate
For the Respondent/s	:	Mr. Rajesh Kumar, AC to GP-3

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 05-02-2025

The record has been taken up on mentioning being made on behalf of the petitioners.

2. Heard learned counsel for the petitioners and learned counsel for the State.



3. The petitioners are aggrieved by the order dated 13.11.2024 passed by the learned Principal District Judge, Madhepura in Title Appeal No. 20 of 2024 whereby and whereunder the learned Principal District Judge stayed the operation of the judgment dated 23.08.2024 and decree dated 31.08.2024 passed in Title Suit No. 134 of 2023 by learned Sub Judge-1, Madhepura.

4. The learned counsel for the petitioners submits that from the order-sheet of the learned first appellate court, it would transpire that requisites for issuance of notice upon the petitioners (respondents before the learned appellate court) have been filed pursuant to the order dated 21.10.2024 and service report was not available till 09.11.2024. However, learned first appellate court, on an application filed on behalf of the State without mentioning any provision, passed the impugned order dated 13.11.2024 without any sanction of law. The learned counsel further submits that there exists no provision of law under which the appellate court could stay the operation of judgment and decree of the trial court. Utmost an appellate court could do is to stay the execution of decree. Hence, the said order could not be allowed to stand as it is a completely illegal order. Moreover, if there is no service of notice upon the respondents



of title appeal, yet the learned first appellate court mentioned that the respondents did not appear in spite of service of notice through ordinary as well as registered post. The learned counsel further submits that the impugned order be set aside and the petitioners would have no objection if the title appeal is decided within a fortnight.

5. The learned counsel for the State though opposes the submission made on behalf of the petitioners, however, learned counsel for the State also has no objection if the impugned order is set aside and the learned first appellate court is directed to dispose of the appeal within stipulated period.

6. I have given my thoughtful consideration to the submission of the parties and have perused the record.

7. I find merit in the contention of the learned counsel for the petitioners that the impugned order has been passed against the express provision of law. There is nothing in the Code of Civil Procedure which may permit the stay on the operation of judgment and decree passed in a title suit by the appellate court, though execution of such decree may be stayed by the appellate court under Order 41 Rule 1 of the Code of Civil Procedure. Then, the learned first appellate court justified the passing of the order in absence of respondents on the ground



that the respondents chose not to appear despite service of notice and this does not appear to be correct.

8. In the light of discussion made so far, I am of the considered opinion that the learned first appellate court exceeded its jurisdiction and passed an erroneous order which could not be sustained. Hence, the impugned order dated 13.11.2024 passed in Title Appeal No. 20/2024 by the learned Principal District Judge, Madhepura is set aside.

9. As a result, the instant petition stands allowed.

10. Since both parties are agreeable to early disposal of the appeal, in the light of submission of both the parties, the learned first appellate court is directed to dispose of Title Appeal No. 20 of 2024 pending before it at the earliest and preferably within a period of three months from the date of receipt/production of a copy of this order.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.02.2025
Transmission Date	NA

