

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1767 of 2017

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Baijnath Sah Son of Late Jangali Sah, resident of Mohalla Shamsherganj near Ganesh Mandir, P.S. Town, District Darbhanga.

... .. Petitioner/s

Versus

1. Kedar Prasad Khandelwal and Ors
2. Hardwar Prasad Khandelwal, Both resident of Mohalla Shamsherganj P.S. Town, District Darbhanga.
3. Smt. Chandralekha Singh, Wife of Late Maheshwar Prasad Singh, resident of Mohalla Shamsherganj, P.S. Town, District- Darbhanga.
4. Jainandan Prasad, Son of Late Maksudan Prasad.
5. Baidyanath Prasad @ Lala, Son of Late Rajendra Prasad.
6. Shyam Prasad, Son of Late Shibnandan Prasad.
7. Ashok Kumar, Son of Late Shibnandan Prasad.
8. Ram Babu Prasad, Son of Late Shivanand Prasad.
9. Murli Prasad, Son of Late Baldeo Prasad.
10. Mohan Prasad, Son of Late Baldeo Prasad. All resident of Mohalla Barabazar Pargana Rampatti, P.S. Madhubani, District Madhubani. Note- Raghunandan Prasad Khandelwal, Chhatto Devi and Munna Prasad died as such not made party.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nilesh Kumar
For the Respondent/s : Mr. Subodh Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL ORDER

13 10-02-2026 The instant application has been filed for setting aside the order dated 17th of March, 2017 passed by learned District Judge, Darbhanga in Misc. Appeal No. 14 of 2016 by which he has allowed the appeal preferred by the petitioner and hold that the petitioner is a tenant of the disputed plot no. 11701 as petitioner never claimed and this point is not answered in favour of the petitioner.



2. The impugned order has been passed in Miscellaneous Appeal No. 14 of 2016. The said appeal arose out of the order dated 18.08.2016 passed in Title Execution Case No. 07 of 2003, which was under challenge in the aforesaid miscellaneous appeal. It is an admitted fact that prior to the filing of Execution Case No. 07 of 2003, the present petitioner, Baijnath Sah, had instituted a miscellaneous case under Order XXI Rule 97 of the Code of Civil Procedure before the learned Executing Court, which was dismissed on merits. Aggrieved by the said dismissal, the petitioner preferred Miscellaneous Appeal No. 10 of 2016 before the learned District Judge, which too was dismissed. After dismissal of his case up to the appellate forum, the petitioner once again filed a petition before the Executing Court seeking stay of the execution proceeding. The said petition came to be decided by the impugned order passed in Miscellaneous Appeal No. 14 of 2016.

3. Learned counsel for the petitioner submits that the petitioner has been held to be a tenant of the suit premises, which finding is wholly unwarranted and contrary to the materials available on record. It is further submitted that while adjudicating Point No. 2, as mentioned in paragraph 7 of the impugned order, the learned court has recorded the following



findings:-

*“7. **POINT NO.2:-** In view of above discussions I find that admittedly the appellant was tenant of the suit premises. Hence, he should be evicted either under the provision of T.P. Act or Bihar Building Rent Control Act. But no such step has been taken by the Respondents against the petitioner-appellant under the provision of above said Act. It is also admitted position by the Respondent that he has already been taken vacant possession of the suit premises from Chandrakala Devi and accordingly the execution of the decree passed in Title Suit No. 138 of 1987 is satisfied. Hence, no need to continue the proceeding. However, on the basis of factual and legal position of the execution proceeding as well as the materials available on the record, it is desirable to stay the execution proceeding for the protection of the tenant of the suit premises. However, the Respondent may take shelter to the procedure for eviction of the appellant from the suit premises under Bihar Rent Control Act if so advised. The impugned order passed by the learned lower court dated 18.08.2026 is hereby set aside. The appeal is allowed.”*

4. Learned counsel for the petitioner further submits



that once the execution of the decree passed in Title Suit No. 138 of 1987 was held to be satisfied by the learned Appellate Court, there was no occasion or necessity for the court to make any further observation granting liberty to the respondent to take recourse to the procedure for eviction of the appellant from the suit premises under the BBC Act, if so advised. It is submitted that since the decree passed in Title Suit No. 138 of 1987 already stands satisfied, the aforesaid observation neither creates nor confers any right, title, or interest in favour of any party, nor does it prejudice the rights of either side. The learned counsel for the respondent further submits that an eviction suit is presently pending between the parties. Hence, the aforesaid observation shall not have any bearing or adverse effect on the rights and contentions of the parties in the said eviction suit. It shall be decided on its own merit.

5. With the aforesaid, the instant application stands disposed of.

(S. B. Pd. Singh, J)

Ankit Kumar/-

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