
(2014) 04 PAT CK 0096

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.24913 of 2013

Sheikh Mahfuz Alam

APPELLANT

Vs

Sheikh Nazaul

RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Citation : (2015) 1 BBCJ 182

Hon'ble Judges : Mungeshwar Sahoo, J.

Bench : Single Bench

Advocate : Mr. Surendra Kishore Thakur, Advocate, for the Petitioners; None, for the Respondents

Final Decision : Disposed Off

Judgement

Mungeshwar Sahoo, J. (Oral) - Heard learned counsel Mr. Surendra Kishore Thakur for the petitioners and learned counsel Mr. Khatim Reza for the plaintiff-decree holder-respondent on the Interlocutory Application No.1834 of 2014.

2. It appears that at the time of issuance of notice in admission matter to the respondents on 17.01.2014, the further proceeding in Execution Case No.04 of 2011 pending in the court of Subordinate Judge-III, Bettiah was stayed.

3. The learned counsel Mr. Khatim Reza for the respondent (plaintiff-decree holder) submitted that the petitioners herein are claiming title on the basis of purchase of an area measuring 6 katha 17 dhoor only and, therefore, the delivery of possession with respect to the other properties to which the petitioners are not claiming could not have been stayed because in the share of the plaintiff-decree holder 1 bigha 7 katha 4? dhoor has been allotted, including the property claimed by the petitioners to have purchased the same.

4. The learned counsel Mr. Surendra Kishore Thakur for the petitioners conceded this fact that the petitioners are claiming only 6 katha 17 dhoor on which they have constructed the house and are residing there. They have got no concern with the rest of the property, which has been allotted in favour of the plaintiff-

decree holder-respondent.

5. In view of the submissions of the parties, the stay order granted on 17.01.2014 is modified to the effect that the further proceeding in Execution Case No.04 of 2011 pending in the court of Subordinate Judge-III, Bettiah, in so far it relates to the property purchased and claimed by the petitioners, shall remain stayed till the disposal of the title appeal by the lower appellate court. In other words, the delivery of possession of the property purchased by the petitioners shall not be delivered to the plaintiff-decree holder. So far in relation to the rest of the property allotted in favour of the plaintiff-decree holder-respondent is concerned, the execution case shall proceed.

6. In view of the above order, there is no reason as to why this writ application be kept pending because this writ application has been filed by the petitioners whereby the lower appellate court has rejected the stay application under Order XLI Rule 5 of the Code of Civil Procedure filed by the petitioners. Since after hearing the parties the stay order has been passed, it will be futile to hear the other parties, who are not concerned with this writ application as the execution case has been filed by the plaintiff-decree holder-respondent represented through learned counsel Mr. Khatim Reza.

7. In the result, this writ application is disposed of in terms of the above order.