

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.670 of 2018

Saket Krishna Son of Sri Binay Krishna, Resident of Krishna Bhawan,
Mthura Prasad Sinha Road M.P. Sinha Road, Kadamkuan, Post Office and
Police Station- Kadamkuan, District- Patna- 800003.

... .. Petitioner/s

Versus

1. Sanjeev Ranjan Gupta and Ors Son of Raj Kumar Prasad.
2. Ranjeet Ranjan Gupta, Son of Raj Kumar Prasad.
3. Meena Gupta, Son of Raj Kumar Prasad.
4. Alok Kumar Gupta, Son of Raj Kumar Prasad.
5. Akash Ranjan Gupta, Son of Raj Kumar Prasad.
6. Rashmi Gupta, Daughter of Raj Kumar Prasad.
7. Ruchi Gupta, Daughter of Raj Kumar Prasad.
8. Vijay Bharti, Daughter of Raj Kumar Prasad.
9. Mira Gupta, Daughter of Raj Kumar Prasad.
10. Mridula Gupta, Daughter of Raj Kumar Prasad. All residents of Mohalla-
Jhing Nagar, Town, Post office and Police Station- Biharsharif, District-
Nalanda.
11. Binay Krishna, Son of Late Raghunandan Prasad, Resident of Mohalla-
Jhing Nagar Town, Post Office and Police Station- Biharsharif, District-
Nalanda.
12. Rajiv Krishna, Son of Late Bansi Lal, Resident of Mohalla- Jhing Nagar,
Town, Post Office and Police Station- Biharsharif, District- Nalanda.
13. Bijay Krishna, Son of Late Bansi Lall, Resident of Mohalla- Jhing Nagar,
Town Post office and Police Station- Biharsharif, District- Nalanda.
14. Ajay Krishna, Son of Bijay Krishna,
15. Ranjit Krishna, Son of Rajiva Ranjan Krishna, Both residents of Mohalla-
Jhing Nagar Town, Post Office and Police Station- Biharsharif, District-
Nalanda.
16. Ranjit Gupta, Son of Rajendra Prasad Gupta.
17. Rajesh Gupta, Son of Rajendra Prasad Gupta.
18. Ashish Kumar Gupta, Son of Rajendra Prasad Gupta.
19. Renuka Devi, Daughter of Rajendra Prasad Gupta.
20. Sudha Kumari, Daughter of Rajendra Prasad Gupta.
21. Kumari Rani @ Pratibha Rani, Wife of Sri Mahananda Shaha, All residents
of Mohalla- Jhing Nagar, Town Post office and Police Station- Biharsharif,
District- Nalanda.
22. Phanindra Narayan Chaudhary, Son of Jotindra Narayan Chaudhary.
23. Mala, Daughter of Jotindra Narayan Chaudhary.



24. Chandra Narayan Chaudhary, Son of Jotindra Narayan Chaudhary. All Residents of Sarafa House, English Bazar, Town and District- Maldah, West Bengal.
25. Arbind Krishna @ Uday Krishna, Son of Late Rathunandan Prasad, Resident of Mohalla- Jhing Nagar, Town Post office and Police Station- Biharsharif, District- Nalanda.
26. Hamendra Prasad, Husband of Asha Devi
27. Sangita Kumari, Daughter of Asha Devi
28. Kavita Devi, Daughter of Asha Devi All residents of Mohalla- Jhing Nagar, Town, Post office and Police Station- Biharsharif, District- Nalanda.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J.S. Arora Mr. Manoj Kumar Mr. Ravi Bhatia
For the Respondent/s	:	Mr. Jitendra Kishore Verma Mr. Ravi Ranjan Mr. Shreyash Goyal Mr. Abhishek Kumar Srivastava Ms. Kumari Shreya Mr. Achyut Mr. Ayush Mr. Prateek Ranjan

CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT

Date : 19-06-2026

Heard learned counsel for both the petitioner as well as learned counsel appearing on behalf of respondent.

2. The instant application has been filed on behalf of the petitioner for grant of following reliefs:-

“(i) For setting aside the order dated 12.03.2018, passed in Miscellaneous Case No. 66 of 2017 by the Court of learned Civil Judge, Senior Division 3rd, Patna, whereby the said miscellaneous case filed by the petitioner under Order XXI Rule 97



of the Code of Civil Procedure for raising resistance in Execution Case No. 01 of 2002, filed for executing the decree and to dismiss the same as against the petitioner, dismissing the same by holding the same to be not maintainable.

(ii) For directing the learned Court below to decide Miscellaneous Case No. 66 of 2017 on its merits and bring the same to its logical conclusion in accordance with law.”

3. Learned counsel for the petitioner submits that the land appertaining to Holding No. 169/A, Municipal Plot No. 222, measuring 18 Kathas, 3 Dhurs and 18 Dhurkis, was jointly purchased by Harilal Sahu, Bansilal and Raghunandan Prasad. Out of the total land, Harilal Sahu owned half share, while the remaining half share was jointly owned by Bansilal and Raghunandan Prasad. After the death of Harilal Sahu, his son, Raj Kumar Prasad, instituted Title Partition Suit No. 07 of 1945 before the learned Sub-Judge-IV, Patna, against Bansilal, which was decided on 26.04.1947. Despite the passing of the said decree, disputes and litigation between the parties continued for several years. Consequently, the parties arrived at an amicable settlement in the year 1982.



4. It is further submitted that the portion of the said holding allotted to Shri Raj Kumar Prasad under the said amicable settlement & as per the said settlement Holding No. 85 was allotted to sons of the said Bansi Lal and Holding No. 85/A was allotted to sons of the Raghunandan Prasad. In terms of the said settlement each party came in exclusive possession of their respective allotted part and their name was repeatedly mutated in the revenue record and accordingly they continued to pay municipal tax separately to the Patna Municipal Corporation.

5. Subsequently, petitioner also got separated from his father Vinay Krishna and brother Sanjay Krishna and the petitioner was allotted Holding No. 106/85B in Circle No. 20A presently Ward No. 38, consisting of land with garage and out house of two rooms. The petitioner by investing a huge amount renovated the said out house and constructed double storeyed house on the said out house. This construction was made openly to the knowledge of the plaintiffs-decree holder and all others.

6. Despite the aforesaid amicable settlement and with full knowledge thereof, Raj Kumar Prasad allegedly sought the appointment of a Survey Knowing Advocate Commissioner with an ulterior motive to encroach upon and lay claim to the land and residential house of the petitioner, which had been constructed



after substantial investment by him. It is further contended that the Commissioner's report was prepared and subsequently confirmed behind the back of the petitioner, without affording him an opportunity of hearing. The petitioner asserts that, although he had attained majority during the pendency of the proceedings, he was never impleaded as a party in the suit thereafter, resulting in serious prejudice to his rights and interests in the property.

7. Thereafter, the decree-holder instituted Execution Case No. 01 of 2002 for the execution of the final decree passed in Title Partition Suit No. 07 of 1945. The petitioner, however, was not a party to the said decree despite claiming an independent right, title and interest in the property in dispute. Accordingly, apprehending dispossession and prejudice to his rights, the petitioner filed Miscellaneous Case No. 66 of 2017 and raised objections/resistance to the execution of the aforesaid decree, asserting that the decree was not binding upon him and could not be executed against the property in his possession.

8. In the aforesaid Miscellaneous Case, respondent nos. 1 to 10 had already entered appearance. Upon hearing the parties, the learned court admitted the said Miscellaneous Case vide order dated 08.09.2017. Subsequent to the admission of the case, respondent nos. 1 to 10, without filing any objection or written



response to the claims raised by the petitioner, filed a petition dated 10.10.2017 challenging the maintainability of the Miscellaneous Case instituted under Order XXI Rule 97 of the Code of Civil Procedure. Through the said petition, they prayed for dismissal of the Miscellaneous Case on the ground of non-maintainability. The aforesaid petition of respondent nos. 1 to 10 was decided by the impugned order dated 12.03.2018 which is under challenge before this Court.

9. After hearing the parties, it appears that it is an admitted position that the suit property, namely Holding No. 169/A, Municipal Plot No. 222, measuring 18 Kathas, 3 Dhurs and 18 Dhurkis, was jointly purchased by Harilal Sahu, Bansi Lal and Raghunandan Prasad. Out of the total property, Harilal Sahu held a half share, while the remaining half share was jointly owned by Bansi Lal and Raghunandan Prasad. After the death of Harilal Sahu, his son, Raj Kumar Prasad, instituted Title Partition Suit No. 07 of 1945 before the court of the learned Sub-Judge-IV, Patna, against Bansi Lal. The said suit was decided on 26.04.1947. Thereafter, the father of the present petitioner challenged the decree by filing Title Appeal No. 144 of 1991, which was dismissed on 23.03.1998. Aggrieved thereby, he preferred Second Appeal No. 113 of 1998 before the High Court, which also came



to be dismissed on 14.06.2000. Subsequently, the father of the petitioner approached the Hon'ble Supreme Court by filing Special Leave Petition (Civil) No. 14937 of 2000 against the judgment passed in the Second Appeal. The said Special Leave Petition was dismissed on 05.02.2001. Thereafter, the decree was again put to challenge by the petitioner's uncle through SLP (D) No. 29372 of 2006 before the Hon'ble Supreme Court, which too was dismissed on 23.10.2009. Thus, the decree attained finality after being unsuccessfully challenged at various higher judicial forums, including the Hon'ble Supreme Court. Pursuant to the judgment and decree passed in Title Partition Suit No. 07 of 1945 final decree was prepared on 08.12.1988 and after disposal of SLP, Execution Case No. 01 of 2002 was filed by the decree holder.

10. Learned counsel for the petitioner submits that the petitioner was not a party to the original Title Partition Suit No. 07 of 1945 and, therefore, the judgment and decree passed therein are not binding upon him. It is contended that, in the absence of his impleadment in the said suit, the decree cannot be executed against him or the property claimed to be in his possession.

11. It is further argued that, notwithstanding the judgment and decree passed in the aforesaid partition suit, an amicable settlement was arrived at among the parties in the year



1982, pursuant to which the parties mutually accepted the arrangement and came into possession of their respective allotted portions, whereafter they continued to reside and enjoy possession thereof peacefully.

12. However, it is pertinent to note here that no registered deed or any documentary evidence of the alleged amicable settlement has been produced either before this Court or before the learned Trial Court. In the absence of any such registered instrument or cogent documentary evidence substantiating the amicable settlement, the contention regarding the alleged family arrangement remains unsupported by any legally admissible document and hence this agreement has no legal force.

13. To buttress his argument, learned counsel for the petitioner placed reliance on the judgment passed in the case of ***Zulfikar Haidar and Ors. Vs. Sajila Khatoon*** passed by a Co-ordinate Bench of this Court in **Civil Miscellaneous Jurisdiction No. 400 of 2018** but this judgment is not applicable in this case because the entire matter of petitioner has already been adjudicated and there was no need to take evidence of either party in the above miscellaneous case. The matter which has been



decided up to the Hon'ble Supreme Court cannot be decided again by the Executing Court.

14. Learned counsel for the respondents submits that the petitioner could not have been a party to Title Partition Suit No. 07 of 1945, as he was not even born at the time of its institution. In support of this contention, it is pointed out that, according to the affidavit sworn by the petitioner on 28.08.2017 in Miscellaneous Case No. 66 of 2017, his age was disclosed as 52 years. Thus, the petitioner was born long after the institution of the aforesaid suit in the year 1945 and, therefore, the question of his being impleaded as a party therein does not arise. It is further contended that the decree passed in the said suit was challenged/tested at various stages by the petitioner's ancestor (father & uncle) and other family members, and after having attained finality up to the Hon'ble Supreme Court, the same cannot now be indirectly questioned by the petitioner in the execution proceedings.

15. Learned counsel for the respondent further submits that the present petitioner/judgment debtor namely, Saket Krishna had knowledge about the judgment and decree of Title Suit No. 07 of 1945 much before. In execution proceeding the petitioner of this case is in the category of judgment debtor no. 13 but he did not file any objection in the execution proceeding. He further submits that



father of the petitioner namely Binay Krishna who is also judgment debtor no. 16 in the execution proceeding and said Binay Krishna contested up to the Hon'ble Supreme Court. Petitioner along with his father and brother have also filed a Title Partition Suit No. 476 of 2002 against Arvind Krishna and others for partition in respect of the property mentioned in the said plaint. In the said suit the petitioner Saket Krishna alongwith his father and brothers admits the judgment and Final Decree passed in T.S. No. 07 of 1945. They also stated in their plaint that:-

“After the said separation from Raj Kumar Prasad (Decree Holders), the land and house allotted the defendants of T.S. No. 07 of 1945 remain joint between the defendants of the said suit who are plaintiff and defendants of the present suit as such it is necessary to partition the said property”.

The above averment is quite sufficient to demonstrate that petitioner was in know of the fact about the allotment made in their favour in Title Suit No. 07 of 1945.

16. It is also admitted fact that the decree passed in Title Partition Suit No. 07 of 1945 was tested by the father and uncle of the petitioner upto the Hon'ble Apex Court and the decree was upheld so now the plaintiff cannot be permitted to assail the validity and legality of the said decree being the descendants of



Bansi Lal who was already party in the above suit and contested up to the Hon'ble Apex Court.

17. After hearing the argument of both the parties, learned trial Court has held as under:-

“I have heard the rival contentions and perused the material on record. This miscellaneous case has been filed under Order XXI Rule 97 read with Section 151 CPC with the primary contention that in spite of an amicable settlement in 1982, the decree holder mischievously got appointed a survey knowing advocate commissioner and got an illegal and incorrect allotment chart prepared with a view to grab the petitioners land and house, and also got the said report confirmed behind his back. It is his contention that the petitioner was never brought on record of the suit. However, what he has not been able to explain in the inordinate delay in filing this miscellaneous case. Admittedly, the petitioner has been arrayed as JD No. 13 in the execution case which has been filed as long back as in the year 2002. Admittedly, he appeared in the said execution case as long back as on 15.02.2010. Admittedly, in the suit instituted by petitioner along with his father and brother i.e. T.P.S. No. 476 of 2002 he has duly admitted the judgment and final decree passed in T.S. No. 07 of 1945. What took him to come up with his claim of an independent adjudication of his right almost seven long years has not been explained. It is



stated in his rejoinder that since another miscellaneous case was filed by his cousin, Praveen Krishna therefore his lawyer advised him to wait and watch. This appears to be a naive excuse which falls miserably short of justifying such huge delay. His another contention that he was not made a party to the original Suit, T.S. No. 7 of 1945 also appears shallow, because as per his affidavit dated 28.08.2017 filed along with the miscellaneous case, his age is 52 years. That goes to show that he was not even born when the said suit was instituted.

On the other hand, OP Nos. 1 to 10 have filed on record unimpeachable documents in the form of orders and reported judgments of the Hon'ble Supreme Court and Hon'ble Patna High Court, which clearly demonstrate that similar litigations fought by petitioner's father, Binay Krishna have ended up in dismissals. It is also not the petitioner's case that his case is on a different footing than that of his father. He has also stated that even his cousin had filed a miscellaneous case, which made him wait and watch before filing the instant miscellaneous case. If that were to be the case, then all family members of the petitioner's family cannot be permitted to misuse this provision of law to raise their similar claims one after the other.

Another fact that also cannot be ignored is that admittedly, part execution of the decree has already been carried out on 07.09.2004 itself. A copy of the nazir's report is also on record. As such, there



appears no reason as to why complete execution should not be carried out. And last, but not the least, since this Court is also in seisin of the said Execution Case No. 01 of 2002, it would be pertinent to mention that this Court has already proceeded with the same vide order dated 10.10.2017, after rejecting the objection raised by one of the JDs, and has ordered issuance of request letter to the Hon'ble District Judge, Patna for appointment of a survey knowing advocate commissioner.

Thus, upon a simple analysis of the material on record, it can be epitomized that the instant miscellaneous case is nothing but a dilatory tactics on part of petitioner to somehow delay the execution proceeding, and by granting any indulgence to the same this Court would be undertaking a futile exercise. All issues as intended to be raised in this case already stand adjudicated upon by the Hon'ble Apex Court, and there arises no occasion for this Court to venture in that realm. Accordingly, finding merit in the petition at hand, it is allowed and the instant miscellaneous case, being devoid of merit and lacking maintainability, is hereby dismissed. Let the case record be consigned to the record room as per rules."

18. The above plea of petitioner is also not maintainable in view of principle of *res judicata* particularly explanation VI of Section 11 of CPC which reads as under:-



*“11. **Res Judicata.** – No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

***Explanation I.** -*

***Explanation II.** -*

***Explanation III.** -*

***Explanation IV.** -*

***Explanation V.** -*

***Explanation VI.** – Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”*

19. A plain reading of Explanation VI to Section 11 of the Code of Civil Procedure makes it clear that once the dispute relating to the partition of the suit property has been finally adjudicated and the decree has been affirmed up to the Hon’ble Supreme Court, the same cannot be reopened by the descendants



or successors-in-interest of Bansi Lal for another litigation. Since the petitioner claims his rights through Bansi Lal, who had already contested the matter, he is bound by the outcome of the earlier litigation. Permitting such a challenge would defeat the very object of the doctrine of *res judicata* and lead to endless litigation, thereby preventing finality in judicial proceedings.

20. The present execution case i.e. Execution Case No. 01 of 2002 is pending for execution of the decree passed on 26.04.1947 prior to independence of our nation. Petitioner has entered his appearance in Execution Case No. 01 of 2002 in the year 2010 and halted the execution proceeding till 16 years by filing petition on 10.10.2017 in Executing Court after seven years of his appearance. Such type of filing frivolous petition is flagrant misuse of legal provision of Order XXI Rule 97 read with Section 151 of CPC.

21. After going through all the above facts, I find that there is no illegality and impropriety in the impugned order. Accordingly, it is upheld as a result of which the instant civil miscellaneous application stands dismissed with an exemplary cost of Rs. 20,000/- payable by the petitioner to the respondent within a period of one month from the date of receipt/production of this order. Earlier order of stay passed by this Court on 16.05.2018



stands vacated and learned Executing Court is hereby directed to conclude the Execution Case No. 01 of 2002 at the earliest preferably within a period of two months from today on day to day basis.

(S. B. Pd. Singh, J)

Ankit Kumar/-

AFR/NAFR	AFR
CAV DATE	20.04.2026
Uploading Date	19.06.2026
Transmission Date	

