

**FA No. 161 of 2018**Haseena Begum and another **Versus** Ramavatar Agrawal and others

16/05/2018	Mr. S.S. Rajput, Advocate with Mr. S.K. Kushwaha, Advocate for the appellant/s. Mr. H.B. Agrawal, Senior Advocate with Ms. Meera Jaiswal, Advocate for respondents. Heard on prayer for stay of execution of decree. Learned counsel for the appellant would argue that the suit filed by the plaintiff was barred by limitation. The decree passed in favour of Somchand against late Chhedi Khan is not binding on the appellant. The suit in the present form for partition was not maintainable. On the other hand, learned counsel for the respondents submits that the decree has been passed in respect of the property for partition in view of the judgment passed in favour of Somchand, father of plaintiff against late Chhedi Khan who was father of appellant Abdul Razzak, the appellants did not take any remedy by filing a separate suit or by filing an appeal against the judgment and decree passed in favour of Somchand against Chhedi Khan. Considering the submission of learned counsel for the parties, particularly taking into consideration that the decree is in respect of the property which was subject matter of Civil Suit No.151A/65 (Somchand Agrawal Vs. Chhedi @ Salar Bux) decreed in favour of Somchand on 14.12.1967 against which, no remedy was taken either by Chhedi Khan or by the appellant who was the successor of the Chhedi Khan and that suit was filed for partition after order passed by the High Court, I am not inclined to stay execution of decree. However, it is directed that the parties shall not create any third party interest whether proprietary or possessory in nature during the pendency of this appeal. The appeal be listed for final hearing. Sd/- (Manindra Mohan Shrivastava) Judge