

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.70 of 2012

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Ramawati Devi & Ors

.... Appellant/s

Versus

Sona Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bindhyachal Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

6 27-01-2015

This Miscellaneous Appeal has been filed against the order dated 07.09.2011 passed by the learned Additional District Judge, F.T.C. V, Saran at Chapra in Misc. Appeal No.32 of 2006. It appears that the title suit No.230 of 1994 was decreed ex parte. Thereafter, the defendants filed application under Order 9 Rule 13 C.P.C. The said Miscellaneous Case was dismissed. Thereafter, the defendants filed Miscellaneous Appeal under Order 43 rule 1(d) of the C.P.C. The Miscellaneous Appeal was allowed and the ex parte decree was set aside.

Therefore, the order passed by the appellate court in Miscellaneous Appeal is not a remand within the meaning of Order 41 Rule 23, 23A and 25 of the C.P.C. Accordingly, it is not appealable under Order 43 rule 1(u), in fact, Civil Revision is maintainable. The appellants have rightly filed the Civil Revision. However, a wrong stamp report was given to the effect that

Miscellaneous Appeal is maintainable. The learned counsel for the appellants without pointing out this wrong stamp report, converted the Civil Revision to Miscellaneous Appeal.

Therefore, the learned counsel for the appellants shall convert this Miscellaneous Appeal to Civil Revision within three weeks.

(Mungeshwar Sahoo, J)

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