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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11168 of 2015

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Kamla Kant Singh @ Munna & Anr

.... Petitioner/s

Versus

Indu Devi & Ors

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Ashok Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

2 04-12-2015 **1.** Heard the learned counsel, Mr. Sri Nand Prasad, for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 4.7.2015 passed by Sub Judge V, Siwan in Execution Case No.2 of 2007 whereby the Court below rejected the application filed by the petitioner under Order XXI Rule 29 of the Code of Civil Procedure and refused to stay the execution case No.2 of 2007.

3. Against this petitioner, there is a decree passed in Title Suit No.186 of 1976 by the Sub Judge V Siwan. Subsequently, the petitioner filed title suit No.95 of 2008 for declaring that the decree passed in Title Suit No.186 of 1976 is a nullity because wrongly in the said suit, the petitioners was shown as minor although he had already attained majority in the year 1988. The

Court below rejected this application recording a finding that both the suits and the execution case are not pending before the same Court. The learned counsel for the petitioner relying on the decision of the Supreme Court reported in ***AIR 1982 SC 686, AIR 1973 SC 528*** submitted that the executing Court should have stay the further proceeding in execution case as the suit filed by the petitioner of the year 2008 is pending before the Sub Judge itself which has passed the decree earlier but before another sub Judge where the execution case is not pending.

4. From perusal of the order, it appears that the Court below has relied upon a decision of the Patna High Court reported in **2003 (1) PLJR 12 Abhinandan Jha Vs. Anant Mishra**. Further admittedly, the application has not been filed by the petitioner in the suit rather the application has been filed in the execution case. In view of the above facts and circumstances of the case, in my opinion, the decision relied upon by the learned counsel for the petitioner is not applicable in the case and, therefore, the impugned order cannot be interfered within in supervisory jurisdiction. Thus, this writ application under Article 227 of the Constitution of India is dismissed.

Sanjeev/- **(Mungeshwar Sahoo, J)**

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