

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.587 of 2016**

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Vijay Kumar Ojha

.... Appellant/s

Versus

Sanjay Kumar Ojha & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dineshwar Mishra

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 07-09-2016

Heard learned counsel Mr. Dineshwar Mishra for the
petitioner.

Perused the impugned order dated 17.06.2016 passed
by learned Subordinate Judge at Dumraon, Buxar in Title Suit
No.37 of 2008.

It appears that this title suit was filed by the plaintiff-
respondent claiming 1/3rd share. The suit was decreed. Defendant
no.1 and defendant no.2 have also got 1/3rd share each. Pleader
Commissioner was appointed for carving out 1/3rd share of the
plaintiff. The Pleader Commissioner submitted his report
separating 1/3rd share of the plaintiff. Thereafter defendant no.1
filed application for carving out 1/3rd share. The present petitioner-
defendant no.2 filed objection. By the impugned order, the court
below has rejected the objection of the petitioner and directed the
Pleader Commissioner to carve out 1/3rd share and he has

cancelled the Pleader Commissioner's Report already submitted.

From perusal of the impugned order, it appears that the court below has recorded clear finding that earlier the Pleader Commissioner was directed to make separate Takhta of defendant no.1 by order dated 04.06.2011 but the Pleader Commissioner has not separated 1/3rd share of defendant no.1 and he submitted the report in the court below. Therefore, the court below has set aside the Pleader Commissioner's Report and has directed to submit further report carving out the share of defendant no.1 also with certain direction mentioned in the impugned order.

In my opinion, in view of the finding of the court below that the Pleader Commissioner was directed earlier by allowing the application filed by defendant no.1, the court below has rightly directed the Pleader Commissioner to make separate Takhta of plaintiff and defendant no.1.

In such circumstances, it is not a case for interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this civil miscellaneous application is dismissed.

Harish/-

(Mungeshwar Sahoo, J)

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