

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.548 of 2016

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Satyaram Singh

.... Appellant/s

Versus

Braj Kishore Dubey & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Om Prakash Upadhyay

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 06-09-2016

Heard the learned counsel for the petitioner.

Perused the impugned order dated 07.01.2016 passed by Sub Judge I, Rohtas at Sasaram in Title Suit No.1342 of 2014 whereby the learned Court below has admitted the title suit after holding that the point raised by the petitioner that the cause of action earlier is different and the cause of action mentioned in this present suit is different can be decided in hearing.

The learned counsel for the petitioner submitted that earlier Title Suit No.78 of 2003 was filed by the plaintiff respondent for declaration of title. The said suit was permitted to be withdrawn with liberty to file fresh suit for the same cause of action on payment of cost of Rs.500/-. Subsequently, the present suit has been filed by the plaintiff by suppressing the entire fact and the cause of action mentioned is totally different and, therefore, the objection application was filed by the defendant petitioner praying

for dismissal of the suit on the ground of suppression of fact and the cause of action is different.

From perusal of the impugned order, it appears that the Court below has only stated that on these grounds mentioned by the petitioner, the suit cannot be dismissed and, therefore, the Court below held that the point raised by the petitioner shall be considered at the time of hearing of the suit.

In view of the above facts when the Court below has not decided this question and has rightly not decided because at the very threshold, prior to admission of the suit, this point raised by the petitioner cannot be decided. The points which are being raised depends on the evidence. In such circumstances, in my opinion, this is not a case for interference in supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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