

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1402 of 2016**

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Santosh Kumar Singh

.... Appellant/s

Versus

Jamuna Mahto & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rama Kant Singh

For the Respondent/s : Mr.

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

ORAL ORDER

2 20-12-2016

It appears that Title Suit No.85 of 1991 was filed by the plaintiff-respondent for partition of the suit property. The suit was decreed preliminarily in the year 1997 and final decree was passed in 2001. The plaintiff-respondent filed Execution Case No.03 of 2013. The petitioner filed Title Partition Suit No.408 of 2003 for partition and for setting aside preliminary judgment and decree and final decree passed in Title Suit No.85 of 1991. This suit has been dismissed on 30.06.2014 by the learned Subordinate Judge-I, Ara against which the petitioner has filed Title Appeal No.71 of 2014.

In the title appeal filed by the petitioner arising out the decree passed in Title Partition Suit No.408 of 2003 application under Order 41 Rule 5 CPC was filed for stay of the delivery of possession during the pendency of the title appeal. The court below has rejected this application.



It appears that the execution case filed by the plaintiff-respondent arises out of Partition Suit No.85 of 1991 whereas title appeal arises out of Title Partition Suit No.408 of 2003. Therefore, the execution case has got no relation with the decree passed in the partition suit of the year 1991. The suit filed by the petitioner has already been dismissed by the trial court against which the plaintiff has filed title appeal.

In such view of the matter, I find no reason to interfere with the impugned order and accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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