

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.994 of 2016**

- =====
1. Sk. Tahir @ Md. Tahir Hussain, Son of Sk. Habib.
 2. Sk. Husnain @ Md. Husnain, Son of Tabarak.
 3. Sk. Abdul Khalik @ Abdul Khaliq, Son of Sk. Tabarak.
 4. Sk. Abdullah @ Abdullah, Son of Sk. Tabarak.
 5. Sk. Nuruddin @ Nuruddin, Son of Sk. Zaheer.
 6. Sk. Shafik, Son of Sk. Zaheer.

.... Defendants/Petitioners.

Versus

1. Nandlal Sah.
2. Alakh Sah.
3. Laxmi Sah.
Sons of Ramkriti Sah.
4. Rambalak Sah.
5. Janardan Sah.
6. Sanjay Sah.
Sons of Ramkriti Sah.
All Resident of Village-Barharwa, Lakhansen, P.S. Dhaka, District-East
Champanan

.... Plaintiffs/Respondents 1st Set.

7. Yash Narayan
8. Binod.
Both sons of Late Rajinan Sah.

.... Defendants/Respondents 2nd Set.

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Appearance :

For the Appellants : Mr. Md. Anis Akhtar, Advocate
For the Respondent/s : Mr.

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

2 28-10-2016 Heard Mr. Anis Akhtar appearing on behalf of the
petitioners.

Perused the impugned order dated 16.07.2016 passed by the
learned Munsif, Sikrahna at Dhaka, East Champaran, in Title Suit
No. 02 of 2012.

The plaintiff-respondent filed the aforesaid suit for
declaration that ex parte judgment passed in earlier suit is not

binding on them as it was obtained fraudulently. The petitioners filed an application under Order 14 Rule 2 of C.P.C. for deciding the question of res judicata as preliminary issue.

The court below by the impugned order has rejected this prayer on the ground that the question of res judicata in the present facts and circumstances of the case is not pure question of law rather it is mix question of fact and law.

Since the court below has found that the question raised by the petitioners is not pure question of law, the same cannot be decided as preliminary issue as according to the provision as contained under Order 14 Rule 2 sub-rule 2 of C.P.C., question of law only can be decided as preliminary issue.

In view of above position and in my opinion, no case for interference in exercise of supervisory jurisdiction under Article 227 of Constitution of India is made out.

Thus, this Civil Miscellaneous Application is dismissed.

(Mungeshwar Sahoo, J)

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