

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1181 of 2016**

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Md. Samsul Haque

.... Petitioner

Versus

Bibichanda Khatoon & Anr

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Krishna Kant Singh, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 28-11-2016

Heard learned counsel Mr. K.K. Singh, for the
petitioner.

Perused the impugned order dated 13.07.2016 passed
by the learned Sub-Judge-Ist, Muzaffarpur in Misc. Case No. 7 of
2015 filed by the petitioner under Section 151 of CPC.

It appears that the plaintiff-respondent filed suit for
declaration of title against the defendant-respondent no.2. The suit
was decreed on compromise. The petitioner is stranger to the suit.
After compromise decree, he filed application under Section 151
of CPC praying for setting aside the compromise decree. By the
impugned order the court below has rejected the said
Miscellaneous Case No. 7 of 2015 recording a finding that it is not
maintainable because firstly the petitioner is not party to the suit
and secondly that the miscellaneous case is barred by law of

limitation.

The learned counsel Mr. K.K. Singh, for the petitioner submitted that one Bibi Khatoon since deceased had orally gifted the suit property in favour of the present petitioner. His name has been mutated, but the plaintiff did not make him party in the suit and got it compromise with the defendant.

So far the question raised by the petitioner is concerned, it may be mentioned here that the petitioner is not a party to the suit. The alleged donor namely, Bibi Khatoon is also not a party to the suit. In such circumstances unless the petitioner get his title declared with respect to the suit property at his instance, the miscellaneous case will not be maintainable and the learned court below has rightly held so since in the compromise decree the petitioner is not party, it will not be binding on him. The allegation made by the learned counsel that the plaintiff playing fraud on court got the compromise decree is concerned, it cannot be investigated in the present miscellaneous case because the petitioner has got no relation with the suit property till he gets his title declared.

Therefore, if so advised, the petitioner may initiate appropriate proceeding before appropriate forum in getting his

title declared and that remedy is available to him. Thus, I find no reason to interfere with the impugned order.

Accordingly, this civil Miscellaneous application is dismissed with the aforesaid observation.

(Mungeshwar Sahoo, J.)

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