

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4408 of 2016

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Rama Shankar Prasad & Ors

.... Petitioner/s

Versus

Nagendra Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Durgesh Nandan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 05-08-2016 Heard the learned counsel, Mr. Mahendra Bharti, for the petitioner.

The Court below by the impugned order dated 20.07.2015 passed in Execution Case No.2 of 1996 / 14 of 1997 has only admitted the Misc. Case under Order 21 Rule 97 filed by the objectors respondent No.7 and 8.

The learned counsel for the petitioner's grievance is that at the instance of third party who is stranger to eviction suit, application under Order 21 Rule 97 is not maintainable. After execution only, he can file application under Order 21 Rule 99 CPC.

From perusal of the impugned order, it appears that the Court below has considered this aspect of the matter and has held that the application under Order 21 Rule 97 is maintainable and has admitted the same for filing herein. The learned counsel relied

upon a decision of this Court in the case of *AIR 1995 Patna 66*.
So far this decision is concerned, simply it can be said that it has
already been implied overruled by the decision of Hon’ble
Supreme Court reported in *AIR 1997 SC 853 and AIR 2002 SC
3083*.

I, therefore, find no reason to interfere with the impugned
order and accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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