

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.336 of 2016**

Binod Kumar Sahu

.... Appellant/s

Versus

Md. Shakeel

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Diwakar Upadhyaya

For the Respondent/s : Mr.

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

ORAL ORDER

4 17-10-2016

Heard learned counsel for the petitioner and learned
counsel for the respondent.

2. Perused the order dated 22.04.2016 passed by the
learned District Judge, Bhagalpur, in T.S. No. 52 of 2015,
whereby the court below has rejected the application filed by the
petitioner under Order 41 Rule 5 C.P.C.

3. It appears that suit for specific performance was filed
by the plaintiff-respondent against the defendant-petitioner. The
suit was decreed. Against the decree, the petitioner filed Title
Appeal No. 52 of 2015. Before the appellate court, said
application was filed praying for staying the further proceeding in
Execution Case No. 48 of 2015. The court below, by the
impugned order, has rejected the said application finding that the
plaintiff is admittedly in possession of the suit property.

4. Learned counsel for the petitioner submitted that if



during the pendency of the appeal, sale deed which has, in fact, been executed is handed over to the plaintiff-respondent, it will create complication in the matter. Therefore, during pendency of the appeal, the sale deed may not be handed over to the plaintiff-respondent and the appellate court be directed to disposed of the appeal within reasonable time.

5. On the other hand, learned counsel for the respondent submitted that the sale deed has already been registered by the registering authority and when the plaintiff-respondent is in possession of the property, there is no question of irreparable loss to the other party arises and if at all the decree would be set aside by the appellate court then the respondent shall suffer.

6. Considering the fact that admittedly the plaintiff-respondent is in possession of the property and the fact that the sale deed has already been registered and in the execution case, the plaintiff-respondent is not praying for recovery of possession of the property, in my opinion, no purpose will be served in staying the further proceeding in the execution case. In fact, the execution case was instituted for execution and registration of the sale deed, which has already been taken effect. Now, the petitioner may pray before the lower appellate court for expeditious disposal of the title appeal. Learned counsel for the respondent submitted that he

is ready to assist the court for expeditious disposal of the title appeal.

7. In view of the above facts and circumstances of the case, I find no reason to interfere with the impugned order passed by the lower appellate court in exercise of supervisory jurisdiction. Thus, this civil miscellaneous application is dismissed. The interim order, if any, is vacated.

Brajesh/-

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(Mungeshwar Sahoo, J)