

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.892 of 2016**

Bindeshwari Singh & Ors

.... Appellant/s

Versus

Saroj Devi & Ors

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Karandeep Kumar

For the Respondent/s : Mr.

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

2 14-09-2016

Heard the learned counsel for the petitioners.

This application under Article 227 of the Constitution has been filed by the defendants-petitioners for setting aside the order dated 04.07.2016 passed by Sub Judge, Motihari in Title Suit No.167 of 2015 whereby the Court below rejected the application filed by the petitioners under Section 10 of the Code of Civil Procedure.

It appears that this Title Suit No.167 of 2015 has been filed by the plaintiffs-respondents under section 6 of the Specific Relief Act for recovery of possession. So far Title Suit No.38 of 2001 is concerned, the plaintiffs-respondents have filed the same for partition of the entire joint family property. So far Title Suit No.331 of 2002 is concerned, the plaintiffs-respondents have filed the said suit for setting aside the alienation made by a joint family member in favour of the present petitioners. The Court below

recorded finding that the issues of three suits are different. In partition suit, the entire property is there whereas in Title Suit No.331 of 2002, the transfer is under challenge. In the present Title Suit No.167 of 2015, the plaintiff filed the suit for recovery of possession under Section 6 of the Specific Relief Act as according to the plaintiffs, the petitioners after purchase have dispossessed the plaintiffs. The suit has been filed within six months from the date of dispossession.

Therefore, in view of the finding of the Court below and in view of the factual position that the entire property in suit i.e. Title Suit No.38 of 2001 is not the subject matter of the other Title Suit No.331 of 2002, Section 10 of the Code of Civil Procedure is not applicable. So far present suit is concerned, it is under Section 6 of the Specific Relief Act, therefore, question of title is not involved.

Accordingly, I find no reason to interfere with the impugned order. Thus, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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