

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1261 of 2016**

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Satyendra Kumar @ Satyendra Prasad & Anr

.... Appellant/s

Versus

Smt. Kiran Devi

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shailesh Kumar

For the Respondent/s : Mr.

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

ORAL ORDER

3 15-12-2016 Heard the learned counsel for the petitioner.

Perused the impugned order dated 28.06.2016 passed by Sub Judge IIIrd, Gaya in Partition Suit No.112 of 2012 whereby the learned Court below rejected the application filed by the petitioner under Order VII Rule 11 (a) and (d) CPC.

It appears that the plaintiff respondent filed the aforesaid partition suit alleging that the suit property is the joint family property originally belonged to Mangar Mahto who had two sons. Although there had been partition between the two sons of Mangar Mahto, the property is still recorded jointly. The suit has been filed by the plaintiff making the second son of Meghan Mahto as defendant No.2 as his heirs as other defendant who are the petitioner herein.

An application was filed by the defendant No.3 and 4 being the heirs of Dasrath Mahto for rejection of the plaint on the ground



that at paragraph 4 of the plaint, the plaintiffs specifically pleaded that there had already been partition.

The Court below by the impugned order has rejected this application and refuse to reject the plaint. From perusal of the genealogical table in Schedule I of the plaint, which is Annexure '1' to this Civil Misc. application, it appears that the statement is made to the effect that there had been partition between Deonath Mahto and Meghan Mahto. The parties to the suit are the heirs of Meghan Mahto. Therefore, the statement at paragraph 4 will not affect the suit filed by the plaintiff for partition of the property of Meghan Mahto.

In my opinion, the application filed by the petitioner is vexatious and frivolous application and it was filed only with a view to delay the disposal of the partition suit filed by a lady who is the plaintiff-respondent. Accordingly, this Civil Misc. application is dismissed with cost of Rs.5000/- to be paid by the petitioner to the plaintiff-respondent within one month from today failing which the plaintiff-respondent may recover the same through the process of the Court.

Sanjeev/-

(Mungeshwar Sahoo, J)

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