

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.19 of 2016**

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Bachcha Pandey & Anr

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Brajesh Kumar Singh

For the Respondent/s : Mr. Ritesh Kumar- Sc33

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

3 09-08-2016

Heard learned counsel Mr. Surendra Kishore Thakur

for the petitioners and learned counsel Mr. Marut Nath Rai, A.C.

to S.C.4 on behalf of respondent nos.1 to 6 on the Interlocutory

Application No.6405 of 2016.

2. This interlocutory application has been filed by the petitioners for adding Article 226 of the Constitution of India in the provision of law.

3. The learned counsel for the petitioners submitted that since the petitioners are praying for issuance of a writ in the nature Mandamus commanding and directing the respondent authorities to provide necessary protection in execution of judgment and decree passed in Title Suit No.14 of 1997, Article 226 of the Constitution of India is appropriate provision.

4. The learned State Counsel does not object this.

5. Accordingly, prayer is allowed and the petitioners

are permitted to add Article 226 of the Constitution of India in the provision of law.

6. Heard learned counsel for the parties on merit.

7. This application under Articles 226 and 227 of the Constitution of India has been filed for issuance of writ in the nature commanding and directing the respondent authorities to provide necessary protection in execution of judgment and decree passed in Title Suit No.14 of 1997.

8. Title Suit No.14 of 1997 was filed by the petitioners for declaration of title and recovery of possession. In this title suit State or the State authorities are not parties. The dispute was between the private persons i.e. petitioners and respondent nos.8 to 12. The said suit has been decreed and thereafter execution case has been filed being Execution Case No.01 of 2002. This writ application has been filed for issuance of direction to the State authorities (respondent nos.1 to 6) and Nazir, Civil Court (respondent no.7).

9. So far application of Article 226 of the Constitution of India is concerned, it may be mentioned here that the Hon'ble Supreme Court in the case of **Radhey Shyam & Anr. vs. Chhabi Nath & Ors., (2015) 5 Supreme Court Cases 423** has considered the earlier Supreme Court decision in the case of **Surya Dev Rai**

Vs. Ram Chander Rai & Ors., (2003) 6 Supreme Court Cases

675 which laid down that a writ under Article 226 was maintainable against the order of the Civil Court and considering various decisions specifically overruled the said decisions. At paragraph 27 it has specifically been held that the orders of Civil Courts are not amenable to writ of certiorari under Article 226 of the Constitution. In the said decision regarding Article 227 the Supreme Court has held that all the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional power, or power of superintendence under Article 227. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. Despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, the jurisdiction of the High Court under Article 227 remains unaffected and has not resulted in expanding the High Court's power of superintendence.

10. In view of the above settled proposition of law if for the relief claimed in this writ application earlier prior to amendment in the Code of Civil Procedure no revision application

was maintainable then after amendment how can it be said that writ application is maintainable for the same. It may be further mentioned that the High Court is not an executing court so as to execute and direct the court below to give possession according to the judgment and decree of the court. Admittedly the petitioners have filed the execution case and are taking steps in the said execution case according to law.

11. Therefore, this civil miscellaneous application, which is being treated as writ application, is not maintainable and accordingly, it is dismissed.

Harish/-

(Mungeshwar Sahoo, J)

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