

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.53 of 2016**

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Bhushan Prasad

.... Appellant/s

Versus

Birendra Kumar Verma & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amar Nath Singh

For the Respondent/s : Mr.

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

2 02-08-2016

Heard learned counsel, Mr. Amar Nath Singh,
appearing for the petitioner and learned counsel, Mr. R.P. Singh,
appearing for the respondents.

2. Perused the order dated 03.02.2016 passed by the
Sub-Judge-IIInd Nalanda at Biharshariff in Execution Case No. 02
of 2013.

3. It appears that the partition suit was filed by the
plaintiff-respondent. It was decreed preliminarily and
subsequently, final decree was passed. For execution of the final
decree, this Execution Case No. 02 of 2013 was filed. In this
execution case, the present petitioner filed petition for dismissing
the execution case on the ground that no notice was ever served on
him in the title suit. Therefore, the execution case may be
dismissed. The learned court below has rejected this application.

4. So far this ground, which was raised before the

executing court and is being raised before this Court in this miscellaneous application is concerned, it is pure question of fact and can only be examined in a properly constituted proceeding. If in fact, no notice was served, the petitioner could have filed application under Order 9 Rule 13 C.P.C. but certainly, the executing court has no jurisdiction to decide this application while executing the final decree.

5. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction and, therefore, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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