

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15851 of 2015

=====

Krishna Chandra Bishnoi

.... Petitioner/s

Versus

Saraswati Bishnoi & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Harshwardhan Sahay

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 27-04-2016

Heard learned counsel Mr. Harshwardhan Sahay for the petitioner.

It appears that in the final decree proceeding Pleader Commissioner's Report was submitted and thereafter the present petitioner filed objection to the Pleader Commissioner.

By the order dated 31.07.2015 the learned Munsif-III, Patna rejected the said objection petition of the petitioner in Partition Suit No.48 of 2009.

It appears that only a formal order is to be passed for confirming the Pleader Commissioner's Report as now the objection has been rejected by the trial court, which amounts to a decree and only the final decree is to be engrossed in the stamp paper. In this connection reference may be made to **A.I.R. 2005 Supreme Court 2564 (Dr. Chiranji Lal v. Hari Das)** wherein the Supreme Court has held that a decree in a suit for partition

declares the rights of the parties in the immovable properties and divides the shares by metes and bounds. Since a decree in a suit for partition creates rights and liabilities of the parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under the Indian Stamp Act. The object of the Stamp Act being securing the revenue for the State, the scheme of the Stamp Act provides that a decree of partition not duly stamped can be impounded and once the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon. The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper.

Therefore when the rights of the parties had been decided by the impugned order, in my opinion, it is appealable and therefore, this writ application under Article 227 is not maintainable. Accordingly, this writ application is dismissed as not maintainable. However, if so advised, the petitioner may file appeal before appropriate forum.

(Mungeshwar Sahoo, J)

Harish/-

U			
---	--	--	--