

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4884 of 2014

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Ravi Nandan Singh

.... Petitioner/s

Versus

Most. Lalmati Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Madhurendra Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 21-01-2016

Heard learned counsel for the petitioner.

This application under Article 227 of the Constitution of India has been filed by the defendant-petitioner against order dated 27.08.2013 whereby the Execution Case No. 04 of 2001 filed by the petitioner has been dismissed.

The learned counsel for the petitioner submitted that in fact while dismissing the plaintiff suit, it was held that the plaintiff is in possession. Therefore, the defendant-petitioner cannot be restrained from taking possession and the petitioner may obtain possession through the process of the Court or in any other proper way. Therefore, the petitioner filed Execution Case but the Court below has wrongly dismissed the said Execution Case.

At the time of hearing of this application, learned counsel placed paragraph-11 of the judgment of the trial Court in Title Suit No. 114 of 1971 which has been annexed to this writ

application. In paragraph-11 the Court below has decided issue no.VIII. Issue no.VIII is – Are the plaintiffs entitled for relief of injunction against defendants? While deciding this issue no.VIII, the Court below held that since the defendants have already obtained decree in Title Suit No. 26 of 1964, no injunction can be granted restraining them from taking possession. Accordingly this issue no.VIII was decided against the plaintiff and thereby rejected the prayer for injunction prayed in the plaint. It cannot be said that this is a decree in favour of the defendants particularly when the defendants never claimed any counter claim nor prayer for recovery or the possession. The Court below while deciding issue no.VIII only considered that the petitioner is decree holder in Title Suit No. 26 of 1964. In such view of the matter the execution has been held rightly not maintainable and thus this writ application is dismissed.

(Mungeshwar Sahoo, J)

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