

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.493 of 2016**

Subhash Chandra Prasad

.... Appellant/s

Versus

Sri Ramdeo Lall & Ors

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ajit Kumar Singh

For the Respondent/s : Mr.

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

2 02-09-2016

Heard learned counsel for the petitioner.

2. Perused the order dated 05.03.2016 passed by the Sub-Judge,II, Munger in T.S. No. 65 of 2006, whereby the learned court below rejected the application under Order 7 Rule 11(d) of the C.P.C. filed by the present defendant-petitioner.

3. It appears that earlier the suit for specific performance has been filed by Ahilya Devi. This matter is pending before the High Court in second appeal. This suit was for specific performance of contract. The present title suit being T.S. No. 65 of 2006 has been filed by respondent Nos. 1 and 2 for declaration of title with respect to the suit property. The application has been filed by the petitioner for rejection of the plaint on the ground that the suit is barred by *res-judicata*.

4. It may be mentioned here that so far *res-judicata* is concerned, it is not a bar to the suit. It is a rule of evidence. So far

the question as to whether, the suit is barred by *res- judicata* or not is concerned, it is a separate issue and for deciding the same, evidence is necessary. It further appears that in the suit for specific performance of contract, the only plaintiff is Ahilya Devi. In that suit only question to be decided is whether the plaintiff is entitled for a relief for specific performance of contract or not. So far this present suit is concerned, the suit has been filed for declaration of title. Now, therefore, the issue involved in the earlier suit is not either directly or substantially any issue in the present suit.

5. In my opinion, there is no jurisdictional error committed by the court below. As such, this civil miscellaneous application is dismissed.

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(Mungeshwar Sahoo, J)