

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.496 of 2016**

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Ram Lochan Sah

.... .... Appellant/s

Versus

Shiv Ratan Sah & Ors

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Sanjeet Kumar Singh

For the Respondent/s : Mr.

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

**ORAL ORDER**

4      16-12-2016      Heard the learned senior counsel, Mr. P. N. Shahi, for the petitioner and the learned counsel, Mr. Sunil Kumar, for the respondent No.1

(2) This application under Article 227 of the Constitution of India has been filed by the petitioner challenging the order dated 21.05.2016 passed by learned District Judge, Sitamarhi in M.A. No.1 of 2016 whereby the order of injunction passed by the trial Court was set aside and the matter was remanded.

(3) The learned senior counsel submitted that the Misc. Appeal itself was not maintainable before the District Judge because the valuation of the suit was Rs.10,00050/- and the District Judge has got pecuniary appellate jurisdiction up to Rs.10 lakh only. Since the Misc. appeal itself was not maintainable, the appellate Court could not have allowed the appeal and set aside the order of the trial Court. The District Judge should have return the memo of appeal to the appellant respondent herein for proper presentation.



(4) From perusal of the impugned order, it appears that the District Judge also noticed the fact that the value of the suit is Rs.10,00050/- but then without deciding as to whether the Misc. Appeal was maintainable before the District Judge or before the High Court, has allowed the Misc. Appeal and remanded the matter. So far the valuation of the suit is concerned, the learned counsel for the respondent did not dispute this fact. At the time of hearing of this Civil Misc. application, the learned counsel for the respondent placed the plaint and admitted the fact that the valuation of the suit is Rs.10,00050/-.

(5) In view of the above facts and circumstances of the case, in my opinion, the Court below has passed the order which suffers from jurisdictional error. In other words, the Appeal was not maintainable and, therefore, the order passed by the Court below is without jurisdiction. Thus, it is set aside and the matter is remanded back to the lower appellate Court, i.e., to the District Judge with a direction to return the Memo of appeal to the respondent No.1 for proper presentation as the respondent No.1 had only filed the Misc. Appeal.

(6) Thus, this Civil Misc. application is allowed. The impugned order is set aside as aforesaid and the matter is remanded back to the lower appellate Court as aforesaid direction.

**(Mungeshwar Sahoo, J)**

Sanjeev/-

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