

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.627 of 2016

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Ram Chandra Giri

.... Appellant/s

Versus

Raghubir Pandey & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 20-09-2016 Heard the learned senior counsel, Mr. S.S. Dwivedi, for the petitioner.

Perused the impugned order dated 22.06.2015 passed by Sub Judge, Areraj, East Champaran in Partition Suit No.2 of 1990 whereby the Court below rejected the application filed by this petitioner for excluding the property which is the property of this petitioner and not that of respondent.

It appears that partition suit was filed by the plaintiff respondent wherein the property of this petitioner was also included. The petitioner then filed application under Order 1 Rule 10 CPC which was allowed. Thereafter, this application has been filed for excluding the said property from the suit for partition. The Court below by the impugned order rejected the application on the ground that the application is pre-mature.

It is admitted fact that the property is the subject matter of

the partition suit. The plaintiff filed the suit claiming partition of the said property. According to the defendant, the said property is the property of this petitioner. Now, therefore, this is a disputed question of fact which can only be decided on the basis of the evidences either oral or documentary that may be brought by the parties. In my opinion, therefore, prior to the trial of the suit, the Court cannot pre-judge a fact which is an issue between the party in the suit.

In view of the above facts and circumstances, in my opinion, no case for interference in exercise of supervisory jurisdiction is made out.

Thus, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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