

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1894 of 2016

=====

Raghubansh Prasad Sah & Anr

.... Petitioner/s

Versus

Deo Chandra Singh & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar Tiwary

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 13-07-2016 Heard the learned counsel, Mr. M.K.Tiwary for the
petitioners.

Perused the order dated 11.09.2015 passed by the learned
Additional District Judge II, Saran in Misc. Appeal No.34 of 2014.

It appears that title suit was filed by the petitioner for
setting aside the ex parte decree passed in earlier suit. In the suit,
the petitioner filed injunction application under Order 39 Rule 1
C.P.C. praying for restraining the defendants-respondents from
dispossessing the petitioners from the suit property because the
respondents have got ex parte decree against the petitioners. The
trial court by order dated 05.08.2014 rejected the injunction
application finding that the plaintiff has got no prima facie case
nor balance of convenience is in favour of the plaintiff nor
plaintiff shall suffer serious loss and irreparable injury. Against
the said order, the present Misc. Appeal No.34 of 2014 was filed

by the plaintiff-appellant-petitioner.

It appears that during the pendency of this appeal, the delivery of possession was effected in execution case which was filed pursuant to the ex parte decree. The lower appellate court held that since the delivery of possession has already been effected, therefore, now the miscellaneous appeal has become infructuous. It is admitted fact that delivery of possession has already been effected. In injunction application, the prayer was made that during the pendency of appeal the petitioners should not be dispossessed. In my opinion, therefore, the learned appellate court has rightly held that miscellaneous appeal has become infructuous.

Thus, I find no reason to interfere with the impugned order, as such, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--