

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1406 of 2016**

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Ganga Das

.... Appellant/s

Versus

Saryoug Das

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajani Kumari

For the Respondent/s : Mr.

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

2 20-12-2016 Heard the learned counsel for the petitioner.

The petitioner has filed this Civil Misc. application under Article 227 of the Constitution of India for setting aside the order dated 18.07.2016 passed by Sub Judge II, Saran at Chapra in Final Decree No.384 of 2003 whereby the learned Court below rejected the objection of the petitioner to the pleader commissioner report as confirmed the pleader commissioner report.

In view of the above factual position that the pleader commissioner report has been confirmed now, this is only required to be engrossed in a stamp paper.

The Hon'ble Supreme Court in the case *Dr. Chiranjilal Vs. Hari Das A.I.R. 2005 SC 2564* has held that 'a decree in a suit for partition declares the rights of the parties in the immovable properties and divides the shares by metes and bounds. Since a decree in a suit for partition creates rights and liabilities of the



parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under the Indian Stamp Act. The object of the Stamp Act being securing the revenue for the State, the scheme of the Stamp Act provides that a decree of partition not duly stamped can be impounded and once the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon. The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper.'

Therefore, since the order impugned determines finally, the rights of the parties is now required to be only engrossed in a stamp paper that may be supplied by the parties. In my opinion, therefore, the order impugned is a decree within the meaning of Section 2(2) of the Code of Civil Procedure. As such it is appealable under Section 96 of the Code of Civil Procedure. Thus, the petitioner has got the remedy under the Code of Civil procedure as such this application under Article 227 of the Constitution of India is not maintainable. The petitioner, may, therefore approach the appropriate forum according to the procedure provided under the Code of Civil Procedure.



Thus, this Civil Misc. application is dismissed with
aforesaid liberty.

(Mungeshwar Sahoo, J)

Sanjeev/-

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