

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.145 of 2016**

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Muzaffar Mahmood

.... Appellant/s

Versus

Fazle Hussain & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar Pandey

For the Respondent/s : Mr.

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

2 17-05-2016

Heard learned counsel Mr. Vishwajit Kumar Mishra

for the petitioner.

By the order dated 26.02.2016 and 06.04.2016 passed by the Sub-Judge-XI, Motihari in Title Suit No. 219 of 1978, the Court below has recalled the order dated 06.02.2016.

It appears that the aforesaid suit was filed by the plaintiffs respondents nos. 1 and 2 who are brothers, claiming partition of their shares in the suit property. The defendant petitioner filed application alleging that the plaintiff no.2 is of unsound mind therefore, he should be represented through his next friend. Earlier the Court below allowed that application. Subsequently, the plaintiff no.2 filed application alleging that he is of sound mind. Therefore, on the basis of the application filed by plaintiff no.2 the Court below recalled the earlier order. Against that order, this writ application has been filed.

In my opinion, since it is the Partition Suit and both the plaintiffs respondents nos. 1 and 2 are claiming jointly the question raised by the petitioner is not required to be decided at all in the present suit. Therefore, the learned Court below has rightly recalled the previous order.

Under such circumstances, I find no reason to interfere with the impugned order.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J.)

Amit/-

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