

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.211 of 2016

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Sachchidanand Jha & Anr

.... Appellant/s

Versus

Narayan Jha & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abinash Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 10-08-2016 Heard the learned counsel, Mr. Sukumar Singh, for the petitioner.

Perused the impugned order dated 18.04.2016 passed by Munsif, Dhamdaha, District-Purnea in Title Suit No.34 of 2007 whereby the Court below has allowed the application filed by the plaintiff respondent seeking permission to deposit the cost for filing fresh suit.

It appears that partition suit was filed by the plaintiff respondent. The defendants contested the said suit on the ground that the property is the self acquired property of the petitioners. Subsequently, by order dated 10.06.2010, the Court below permitted the plaintiff to withdraw partition suit No.34 of 2007 on payment of cost of Rs.1000/-. After four years in the year 2014, application was filed by the plaintiff seeking permission to deposit Rs.1000/- as cost and to file the suit. By the impugned order dated 18.04.2016, the Court below has allowed this application.

The learned senior counsel, Mr. Sinha, relied upon the decision

of the Hon'ble Supreme Court reported in *AIR 2000 SC 2132 (K.S. Bhupati Vs. Kokila)* on the basis of this decision, the learned counsel submitted that the Court has to give reason for permission to withdraw the suit with liberty to institute a fresh suit. According to the learned counsel, the Court below has not recorded any reason as to why permission was granted with liberty to file fresh suit.

From perusal of the decision relied upon by the learned counsel for the petitioner, it appears that in the case before the Supreme Court which was not a case for partition. The original order dated 10.06.2010 by which the suit was permitted to be withdrawn with liberty to file fresh suit was never challenged by the defendant petitioner. By the impugned order now after four years, in view of the said order, the Court has only permitted the plaintiff to deposit the cost and to file the suit on payment of further cost of Rs.5000/-.

From perusal of the original order dated 10.06.2010, I find that no time has been fixed for deposit of the cost and to file the suit. In partition suit, there is recording cost of action, therefore, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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