

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.1046 of 2009

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Chandra Bhushan Mishra & Anr

.... Petitioner/s

Versus

Bachchi Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s

:

Mr. Ashok Kumar

Mr. Md.Waliur Rahman

For the Respondent/s

:

Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

16 30-06-2016

Heard learned counsel for the petitioners and learned
counsel for the respondents.

It appears that as far back as in the year 2009 the office pointed out that the maintainability of this revision application shall be considered only after the fact regarding provision of law under which title appeal filed before the lower appellate court is mentioned. Still today even at the time of hearing of this revision application the petitioners are unable to show under which provision the title appeal was filed. However, from perusal of the judgment dated 28.03.2009 passed in Title Appeal No.19 of 1994/05 of 2007 by Additional District Judge, F.T.C.-VII, Sitamarhi it appears that the judgment and decree of the trial court was modified and it was directed that the modification referred in the judgment shall form part of the

decree. It means that a decree is also prepared by the lower appellate court.

Now, therefore, the judgment and decree has been passed by the trial court according to the provision as contained in Section 17 of the Arbitration Act, 1940. Against the judgment and decree title appeal was filed, which will be presumed that it was under Section 96 of the Code of Civil Procedure because no decree is prepared if the proceeding is initiated under the Arbitration Act.

In view of the above fact this revision application under Section 115 of the Code of Civil Procedure against the judgment and decree passed by the lower appellate court is not maintainable. Accordingly, this revision application is dismissed.

If so advised and if according to the petitioners appeal is maintainable or any other proceeding is to be initiated against the judgment and decree, the petitioners may file a fresh proceeding.

(Mungeshwar Sahoo, J)

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