

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.847 of 2016

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Simmi Kumari

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shashi Bhushan Singh

For the Respondent/s : Mr. Prashant Pratap- Gp2

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 21-10-2016

It appears that respondent nos.1 and 2 have wrongly been made party in this civil miscellaneous application. Therefore, the names of respondent nos.1 and 2 are hereby deleted.

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

Perused the impugned order dated 18.06.2016 passed by learned 2nd Additional District Judge, Muzaffarpur in Title Appeal No.44 of 2010 whereby the learned court below rejected the application filed by the petitioner under Order 41 Rule 25 of the Code of Civil Procedure for framing an issue in the appeal.

From perusal of the impugned order, it appears that the court below has held that this question, which is being raised by the appellant regarding framing of issue, is a matter that can be seen at the time of final hearing of the appeal.

Order 41 Rule 25 C.P.C. speaks about the jurisdiction



of the appellate court i.e. jurisdiction of remand. If at all the Court will find at the time of hearing of the appeal that a particular issue is necessary to be framed then the Court can frame an issue and remand the same for a fresh decision according to the provision. However, there is no provision in C.P.C. for framing of issue prior to hearing the appeal. The appellate court has to exercise the appellate jurisdiction under Order 41 of the Code of Civil Procedure and Order 41 Rule 31 speaks about the contents of the judgment of the appellate court. If this issue is raised before the court below and if at all it is necessary, the appellate court can decide the same but for that purpose separate issue is not at all necessary to be framed before the appeal is heard.

Thus, in my opinion, I find no reason to interfere with the impugned order. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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