

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.542 of 2016**

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Awadhesh Prasad Keshri @ Awadhesh Keshri & Ors

.... Appellant/s

Versus

Raj Kumar Mandal

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Baleshwar Kamat

For the Respondent/s : Mr.

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

ORAL ORDER

2 06-09-2016

Heard learned counsel for the petitioners

2. Perused the order dated 14.03.2016 passed by the learned Munsif, Birpur in Title Execution Case No. 03 of 2002, whereby the court below rejected the application filed by the judgment debtor-petitioners for dismissal of the execution case as not maintainable.

3. Learned counsel for the petitioners submitted that the suit was filed by the plaintiff-respondent only for declaration of title, no relief was claimed by the plaintiff-respondent for recovery of possession and the Court fee was also not paid and, therefore, the execution case for recovery of possession was not maintainable but the learned court below rejected the application filed by the petitioners.

4. Perused the impugned order. It may be mentioned here that the decree is Annexure-1 to the Civil Miscellaneous

application. From perusal of the decree, it appears that the plaintiff has filed the suit for declaration of title and also for recovery of possession of the suit property after evicting the defendant No.1. Therefore, the statement made by the learned counsel for the petitioners is factually incorrect and misconceived. Judgment has been passed by the court below, whereby the plaintiff's suit has been decreed *in toto*.

5. In such circumstances, the court below also rightly observed that the petitioners are only trying to delay the disposal of the execution case on frivolous and vexatious grounds and this application has also been filed on frivolous and vexatious grounds. Thus, this civil miscellaneous application is dismissed with a cost of Rs. 5,000/- to be paid by the petitioners, which must be deposited by him in the executing court within one month from today, failing which, the same shall be realized through the process of the Court. If the cost is deposited, the same may be withdrawn by the decree holder-respondent.

Brajesh/-

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(Mungeshwar Sahoo, J)