

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.366 of 2016**

Most. Shakuntala Devi

.... Appellant/s

Versus

Smt. Kaushalya Devi & Ors

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Baban Kumar

For the Respondent/s : Mr.

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

2 11-07-2016 The learned counsel, Mr. Shanti Kumar, for the petitioner submitted that the objection filed by the petitioner under Order 21 Rule 97 and 99 and 101 of the Code of Civil Procedure has been rejected on the ground of maintainability only.

However, from perusal of the impugned order 12.05.2016, it appears that the Court below has decided the rights of the parties, i.e., the claim of the petitioner, vis-à-vis., the claim of the decree holder and held that since the sale deed of the year 1972 has already been declared, void, there is no question of title being transferred to the vendor's vendor of the petitioner and finding has been recorded against the present petitioner.

In my opinion, therefore, it is not the fact that the Court below has not adjudicated the rights of the parties as required under Order 21 Rule 101 CPC. On recording this finding, the Court below has also held that because of the above, the objection

is not maintainable. In no case, it can be said that the Court below refused to exercise its jurisdiction.

In view of the above discussion, in my opinion, this order dated 12.05.2016 is to be treated as decree under Order 21 Rule 103 of the Code of Civil Procedure. The petitioner, therefore, if so advised, may file Appeal according to the Code of Civil Procedure. However, this Civil Misc. Application is therefore, not maintainable.

Thus, this Civil Misc. Application is dismissed with the above direction.

(Mungeshwar Sahoo, J)

Sanjeev/-

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