

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.583 of 2016**

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Krishnakant & Ors

.... Appellant/s

Versus

Satendra Singh

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Braj Nandan Singh

For the Respondent/s : Mr.

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

2 01-09-2016 Heard the learned counsel, Mr. Navin Kumar, for the petitioner and the learned counsel, Mr. Neeraj Kumar, for the respondent.

It appears that the sole respondent has appeared suo motu.

This application under Article 227 of the Constitution of India has been filed by the defendant for setting aside the order dated 05.05.2016 passed by Subordinate Judge II, Patna in Title Suit No.391 of 1986 whereby the Court below rejected the application filed by the defendant petitioner under Section 10 of the Code of Civil Procedure.

From perusal of the impugned order, it appears that the Court below recorded finding that the suit filed by the present petitioner is in continuation of the earlier Eviction suit No.103 of 1974, therefore, the suit filed by the present petitioner is the previous suit and in appeal, the appellate Court directed the

appellant to institute regular title suit. The Title suit filed by the present petitioner is of the year 1979, i.e., Title Suit No.8 of 1979 which is now pending before the appellate Court being Title Appeal No.111 of 1984.

Admittedly, the evidence of the plaintiff respondent had already been concluded on 2.8.1989 and thereafter, the defendant were directed to adduce evidence but still then in one ground or the other, the suit is being deleted by the defendant petitioner. From perusal of the counter affidavit, it appears that in 1989 application under Order 14 Rule 2 CPC was filed for deciding the maintainability of the suit as preliminary issue. Again on 3.4.1991, an application under section 151 CPC was filed praying for stay of the suit during pendency of Title Appeal No.111 of 1984. The said application was rejected by order dated 14.06.1991 and the suit was fixed for hearing. Thereafter, several applications were filed for recall of the orders but then still today it is as submitted by the petitioner, no witnesses have been examined. So far rejection of Section 10 application is concerned, in the year 1991, it was not challenged by the petitioner before superior Court. On these grounds since 1989, the petitioner is dragging the matter and he has been able to drag up to 2016.

It is settled principal of law that the order in one stage of the

suit deciding right of the parties in one way of the other will operate as res judicata in subsequent stage of the said suit when prayer of the petitioner for stay has already been rejected in the year 1991, therefore, that order will operate as res judicata. Moreover, the respondent has already adduced their evidences and concluded as far back as in the year 1989.

In view of the above facts and circumstances of the case and the finding recorded by the Court below, in my opinion, it is not a case for interference in supervisory jurisdiction.

Thus, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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