

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.166 of 2016**

Mostt. Prabhawati Kunwar

.... Appellant/s

Versus

Purushottam Kumar Singh & Ors

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Shailesh Kumar

For the Respondent/s : Mr.

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

2 08-08-2016

Heard the learned counsel for the petitioner.

Perused the order dated 01.02.2016 passed by Sub Judge

I, Bikramganj, Rohtas in Title Suit No.126 of 2015.

From perusal of this impugned order, it appears that the learned Court below has dismissed the suit at the admission stage itself on the ground that wife cannot herself demand partition but on partition, she is entitled to a share and enjoy it separately in view of the judgment of the Supreme Court **AIR 2011 Supreme Court 1542.**

In view of this finding of the Court below and the fact that the suit has been dismissed, the right of the petitioner has already been decided. If it is held that the petitioner has no cause of action and, therefore, the plaint is rejected then also it is a decree and the right of the petitioner has been decided and it has been held that the suit is not maintainable at the instance of the petitioner in view

of the Hindu Succession Act then also it is a decree.

In such view of the matter, if so advised, the petitioner may file regular appeal but certainly the judgment and decree passed by the Court below impugned herein cannot be examined in exercise of supervisory jurisdiction under the Constitution of India particularly when the petitioner has got the remedy under the Code of Civil Procedure itself.

Thus, this civil miscellaneous application is dismissed as not maintainable. The petitioner may avail the forum of appeal.

(Mungeshwar Sahoo, J)

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