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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4717 of 2014

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Ratan Das & Ors

.... Petitioner/s

Versus

Rajeshwar Das & Ors

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Amarnath Jha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

2 22-01-2016 **1)** Heard the learned counsel, Mr. Ajay Kumar Singh, for the petitioner.

2) By the impugned order dated 20.01.2014, the Court below in Title Suit No.115 of 2005 rejected the application filed by the petitioner for deciding the question of res judicata as preliminary issue and to dismiss the suit.

3) After amendment of the Code of Civil Procedure in the year 1976, the provision as contained under Order XIV Rule 2 is not mandatory. Since the question regarding res judicata is mixed question of law and fact, the same can be decided with other issues by the Court. The Court below has also considering this fact that the question of res judicta is mixed question of law and fact rejected the application.

4) In such circumstances, it cannot be said that the order

passed by the Court below in any way prejudiced the petitioner nor it occasioned failure of justice nor it can be said that the order passed by the Court below is without jurisdiction or it has passed the order in the manner not permitted by law. Therefore, no case for interference in supervisory jurisdiction is made out. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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