

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1183 of 2016**

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Amarnath Paswan

.... .... Appellant/s

Versus

Hari Shankar Paswan & Ors

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Dharmendra Kumar Paswan

For the Respondent/s : Mr.

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

ORAL ORDER

3      08-12-2016      Heard the learned counsel for the petitioner.

Perused the impugned order dated 17.08.2016 passed by Sub Judge Ist, Sheohar in Final Decree Case No.1 of 2015 whereby the learned Court below has rejected the application filed by the plaintiff petitioner for allotment of Schedule II property in his share.

It appears that partition suit was filed by the plaintiff petitioner and in that partition suit, prayer was made for declaration that the Schedule II property is the self acquired property of the plaintiff. The Court below decreed the suit and also declare that the Schedule II property is the property of the plaintiff. Final decree proceeding is going on. In the meantime, this application has been filed by the plaintiff for allotment of the said property in favour of the plaintiff.

From perusal of the Judgment annexed with the Civil Misc.



application at paragraph 14, the Court below has clearly recorded a finding that the Schedule II property is the self acquired property of the plaintiff. This property, therefore, is required to be allotted in the final decree and there is no provision in CPC that prior to preparation of final decree, separate allotment may be made to the plaintiff on the basis of any finding in the Judgment and preliminary decree. Therefore, in my opinion, the Court below has rightly held that it will be considered in the final decree only.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this Civil Misc. application is dismissed.

It is made clear that this order of this Court shall not prejudice the plaintiff in the final decree.

**(Mungeshwar Sahoo, J)**

Sanjeev/-

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