

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2343 of 2016

=====

Surendra Baheliya

.... Petitioner/s

Versus

Nirmala Sinha & Anr

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Arun Kumar Rai

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 29-08-2016

Heard learned counsel, Mr. Arun Kumar Rai,
appearing for the petitioner and learned Senior Counsel, Mr.
Dhruv Narayan, appearing for respondent No.1.

2. Perused the impugned order dated 06.01.2016 passed
by the learned Sub-Judge-II, Saran at Chapra in Miscellaneous
Case No. 31 of 2013, whereby the learned court below refused to
dismissed the application filed by the respondents under Order 21
Rule 97 C.P.C.

3. It appears that the partition suit has been filed by the
petitioner was decreed by the lower appellate court and confirmed
by the High Court. Thereafter, the petitioner filed Execution Case
No. 03 of 2013. In the said execution case, objection under Order
21 Rule 97 C.P.C. was filed by respondent No.1. According to
respondent No.1, she has already purchased part of the suit
property prior to institution of the partition suit i.e in the year



1993. Respondent No.1 has acquired title but the decree holder did not make her party-defendant in the suit and the judgment and decree passed in the suit now sought to be executed against respondent No.1. This application was registered as Miscellaneous Case No. 31 of 2013. In this miscellaneous case, application was filed by the present petitioner under Order 21 Rule 102 C.P.C. and prayed for rejection of the miscellaneous case. By the impugned order, the court below has rejected this application filed by the decree holder-petitioner.

4. Admittedly, respondent No.1 is the purchaser of the suit property prior to institution of the partition suit. Therefore, the provision as contained in Order 21 Rule 102 C.P.C. is not applicable. The learned counsel for the petitioner submitted that for the same relief, respondent No.1 has filed title suit against the petitioner as well as the co-operative society, the vendor of respondent No.1. On the ground that title suit is pending, application under 21 Rule 97 cannot be rejected outrightly. In this matter, reference may be made to the decision of the Supreme Court AIR 2002 SC 3083 (*Tanzeem –E- Sufia Vs. Bibi Haliman & Ors.*) It appears that in that decision, the High Court rejected the objection under Order 21 Rule 97 C.P.C. on the ground that the suit has been filed. The Supreme Court set aside the order of the High

Court.

5. In view of the above facts and circumstances and settled principles of law, in my opinion, the court below has rightly passed the impugned order as Rule 102 of Order 21 C.P.C. is not applicable in the present case. Thus, this writ application is dismissed.

brajesh/-

U			
---	--	--	--

(Mungeshwar Sahoo, J)