

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1518 of 2016**

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Mst. Anchhi Devi & Anr

.... Appellant/s

Versus

Mst. Bhagiya Devi

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Birendra Kumar

For the Respondent/s : Mr.

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

2 23-12-2016

Heard learned counsel for the petitioners.

It appears that by the impugned order dated 16.09.2016 the learned District Judge, Nawada has dismissed the Title Appeal No.02 of 2016 being time barred. Admittedly title suit was decided on merit.

The only grievance of the petitioners is that instead of dismissing the title appeal the District Judge has disposed of the title appeal.

In my opinion only because in place of 'dismissed' it has been typed as 'disposed of', the order cannot be interfered with in exercise of supervisory jurisdiction because a Division Bench of this Court in 1996 (1) P.L.J.R. 494 has held that the suit has been decided on merit and against that appeal is filed which is dismissed on the ground of limitation then the decree of the trial court merged in the order of the appellate court, therefore, it is a



decree, which is appealable. The Supreme Court also in A.I.R. 2005 Supreme Court 226 has held that the dismissal of the appeal on being barred by law of limitation is nevertheless a decision in the appeal.

In view of the above facts and circumstances this civil miscellaneous application is not maintainable as the impugned order is a decree, therefore, the petitioners if so advised, may file appeal according to the Code of Civil Procedure.

Thus, this civil miscellaneous application is dismissed with the aforesaid liberty.

(Mungeshwar Sahoo, J)

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