

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.137 of 2017**

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Mahesh Sah

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Jha

For the Respondent/s : Mr. Md.Khurshid Alam-Aag12

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 28-01-2017 Heard the learned counsel, Mr. Alok Kumar Jha for the petitioner and the learned counsel, Mr. Asif Kalim for the respondents.

Perused the impugned order dated 01.09.2016 passed by District Judge, Sitamarhi in Misc. Appeal No.4 of 2016 whereby the learned District Judge dismissed the appeal and confirmed the order dated 29.02.2016 passed by Munsif, Pupari at Sitamarhi in Misc. Case No.6 of 2014 arising out of an application under Order 39 Rule 2A C.P.C.

The learned counsel for the petitioner submitted that the plaintiff-petitioner filed Title Suit No.34 of 2000 praying for declaration of title and for injunction for restraining the defendant-respondents from going over the land of the plaintiff-petitioner. According to the learned counsel for the petitioner, the suit was decreed in the year 2004. After decree of the suit, the defendants-respondents encroached the plaintiff-petitioner's land in the year



2013. Therefore, the petitioner filed application under Order 39 Rule 2A C.P.C. as the defendants-respondents fully violated the order of the Court passed in the aforesaid Title Suit No.34 of 2000. The enquiry report is also on the record.

On the other hand, the learned counsel for the respondents submitted that against the violation of a decree, Order 39 Rule 2A C.P.C. is not maintainable.

Admittedly, the suit has been decreed, therefore, decree has been passed.

The Hon'ble Supreme Court in the case of **Kanwar Singh Saini vs. High Court of Delhi, (2012) 4 Supreme Court Cases 307** has held that against the decree, contempt under Order 39 Rule 2A C.P.C. is not maintainable. The plaintiff has to execute the decree.

In view of the settled proposition of law, against the final decree when the case has been disposed of, Order 39 Rule 2A application itself was not maintainable.

Thus, the application filed by the petitioner under Order 39 Rule 2A C.P.C. is hereby rejected. Accordingly, this civil miscellaneous application is also dismissed.

Saurabh/-

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(Mungeshwar Sahoo, J)

