

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.168 of 2017**

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1. Rekha Devi d/o of Late Vidya Sagar Rai, w/o Shri Bharat Singh Keshri, R/o Mohalla- Jai Prakashpur, P.O. Noorsarai, P.S. Biharsharif, District Nalanda, presently residing at Mohalla- Sultanpur, P.O. Danapur Cantt., P.S. Danapur, District Patna.
 2. Archna Kumari, d/o Late Vidya Sagar Rai, w/o Sidharth Ranjan, presently residing at Mohalla- Industrial Area, Audyogik Thana (in the gali), P.S Audyogik Thana, Hajipur, P.O. Hajipur, District Vaishali.
- Appellant/s

Versus

1. Anita Devi d/o Late Vidya Sagar Rai, w/o Manoj Kumar, R/o Mohalla- Dhobi Tola, P.O.- Danapur Cantt., P.S. Danapur, District Patna, presently residing at Mohalla- Sultanpur, P.O. Danapur Cantt., P.S. Danapur, District- Patna.
2. Devraj Kumar
3. Vikki Kumar, both are sons of late Sunita Devi and Deo Chandra Prasad.
4. Sujata Kumari,
5. Tannu Kumari, both are daughters of late Sunita Devi and Deo Chandra Prasad.
6. Deo Chandra Prasad, s/o Late Sheo Prasad Rai, No. 2 to 6 are resident of Mohalla- Sultanpur, P.O. Danapur Cantt., P.S. Danapur, District Patna.
7. Kiran Devi, wife of Late Nandu Rai, d/o Late Vidya Sagar Rai, resident of Mohalla- Jairam Bazar Khagaul, P.O. + P.S. Khagaul, District.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Viveka Nand Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 30-01-2017

Heard the learned counsel for the petitioners.

This civil miscellaneous application has been filed under Article 227 of the Constitution of India praying for a direction to the Sub-Judge-III, Danapur to prepare a final decree as the Pleader Commissioner's report has been confirmed after rejection of the objection.

The learned counsel for the petitioners submitted that the order, whereby the Pleader Commissioner's report was confirmed, was challenged before the High Court, which has been dismissed, but till today the final decree has not been prepared.



From perusal of the order passed by the High Court in CWJC No. 14484 of 2014, it appears that the High Court has dismissed the said writ application on the ground that the order whereby the Pleader Commissioner's report was accepted, is not amendable to the jurisdiction under Article 227 of the Constitution of India. The writ application was dismissed and the petitioner of the writ application was granted liberty to avail appropriate remedy. It may be mentioned here that this order, whereby the Pleader Commissioner's report has been confirmed, is a decree against which the appeal is maintainable. Therefore, at this stage, in this civil miscellaneous application, no such direction can be given to the court below to prepare the final decree, which is dependant upon the filing of the stamp.

The Hon'ble Supreme Court in the case of **Dr. Chiranji Lal vs. Hari Das [AIR 2005 Supreme Court 2564]** has held that the scheme of the Stamp Act provides that a decree of partition not duly stamped can be impounded and once the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon. The engrossment of the final decree in a suit for partition would relate back to the date of the decree. Therefore, in view of the settled principles of the Court, now the decree is to be prepared on the stamp paper and that may be supplied by the parties praying for preparation of final decreed.

Thus, I find that no such direction can be given to the court below. Accordingly, this civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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