

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.333 of 2017

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Ram Pravesh Rai

.... Petitioner

Versus

Smt. Gangajali Devi & Ors

.... Respondents

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Appearance :

For the Petitioner : Mr. Ved Prakash Srivastva

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 22-02-2017 Heard learned Senior Counsel Mr. Mahesh Narayan
Parbat for the petitioner.

Perused that part of the impugned order dated 26.09.2016 passed by the learned Subordinate Judge-VII, Saran at Chapra in Title Suit No.76 of 2009 whereby the court below has refused to frame and decide the question of res-judicata as preliminary issue under Order 14 Rule 2(2) of the Code of Civil Procedure on the ground that the question of res-judicata in the case is a mixed question of fact and law.

In view of the finding of the court below now it becomes clear that for deciding the question of res-judicata, evidences are necessary. Order 14 Rule 2(2) provides that the question of law only can be decided as preliminary issue, if it relates to the jurisdiction of the court and the suit is barred under any law. In the present case, since the question of res-judicata is a



mixed question of law and fact what to speak of pure question of law, there is no question of deciding the same as preliminary issue under Order 14 Rule 2(2) arises.

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

Harish/-

(Mungeshwar Sahoo, J)

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