

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.59 of 2017**

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Sunil Kumar Upadhayay & Ors

.... Appellant/s

Versus

Shambhu Saran Upadhayay & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nitesh Kumar

For the Respondent/s : Mr.

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

- 2 23-01-2017 **1.** Heard the learned senior counsel, Mr. A. B. Ojha, for the petitioner.
- 2.** Perused the impugned order dated 29.09.2016 passed by Sub Judge Ist, Saran at Chapra in Execution Case No.1 of 1985.
- 3.** It may be mentioned here that the final decree was confirmed by the High Court and against the said Judgment and Decree of the High Court, the present petitioner filed Special Leave petition to Appeal before the Hon'ble Supreme Court. Before the Hon'ble Supreme Court, the said Special Leave Petition was withdrawn with liberty to move in the Court below for amicable settlement between the parties regarding right of way. Thereafter, before the Court below, the petitioner filed application praying for giving way to go to the house allotted in favour of the present petitioner. Some of the parties agreed that



they are ready to give the way or exchange their land with the present petitioner. The Court below held that the final decree cannot be modified and the petitioner may get it by filing a separate suit.

4. Admittedly, the final decree has been confirmed up to the Supreme Court. Now, therefore, the final decree cannot be modified either by the trial Court or executing Court or by the High Court. The Supreme Court only said that the petitioner is at liberty to amicably settled his dispute with the co-sharer. Therefore, if at all the respondents are ready to settle the dispute they may do so outside the Court but for that purpose on the ground of amicably settlement, the final decree cannot be modified.

5. I, therefore find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

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