

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.741 of 2016**

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Laxmi Prasad Shahu

.... Petitioner/s

Versus

Seema Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manish Jha

For the Respondent/s : Mr.

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

7 13-01-2017 Heard the learned counsel for the petitioner and the
learned counsel for the respondents.

Perused the impugned order dated 29.04.2016 passed by
Munsif, Danapur in Execution Case No.13 of 2005 whereby the
learned Court below rejected the application filed by the petitioner
for dismissal of the execution case on the ground that the
execution case for execution of the preliminary decree is not
executable.

From perusal of the impugned order, it appears that the
Court below has elaborately dealt with the facts of the case. It
appears that the property was mortgaged by the ancestor of the
respondents in the year 1969. Subsequently, the mortgagee filed
Money Suit No.7 of 1976 for realization of the amount of interest
as the mortgage was usufructuary mortgage. The said money suit
was decreed ex parte and in execution case, the property was



auction sold. The petitioner vendor's vendor purchased the property in auction sale. Thereafter, the ancestor of the plaintiff-respondents filed title suit in the year 1982 for setting aside the ex parte decree and setting aside the auction sale. The said suit was decreed. No appeal was filed and, therefore, that judgment and decree became final. Thereafter, in 2000, redemption suit was filed by the plaintiff-respondent Nos.1 and 3 in the year 2005 which has been decreed and then the execution case has been filed. The petitioner filed civil revision against the order whereby the prayer for stay of execution case was rejected. The High Court disposed of civil revision application and thereafter the present petitioner filed Title Suit No.51 of 2011 but the suit was dismissed on the ground of resjudicata because prior to that, his application under Order 21 Rule 97 C.P.C. had already been dismissed. Thereafter, this present application has been filed by the petitioner for dismissal of the execution case.

From perusal of the impugned order, it appears that the Court below has considered all these aspects of the matter and has found that the present petitioner has purchased the title from a person who had no title and the purchase has been made during the pendency of the redemption suit.

In view of the above facts and circumstances of the case,



it appears that the petitioner is lingering the matter since 2005 and has been able to linger the matter for last 11 years by misusing the process of the Court. His vendor auction sale has already been set aside. The title suit filed by the petitioner has already been dismissed. The application filed under Order 21 Rule 97 C.P.C. has also been dismissed. Now therefore, the petitioner has got no semblance of title over the suit property.

Considering the above facts and circumstances that the petitioner is only trying to linger the matter by adopting the dilatory tactics, this civil miscellaneous application is dismissed with cost of Rs.5,000/- to be paid by the petitioner to the respondents within one month from today failing which the same shall be realized by the respondents through the process of the court in the execution case itself.

(Mungeshwar Sahoo, J)

Saurabh/-

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