

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.102 of 2016**

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Praveen Kumar

.... Petitioner/s

Versus

Dr. Ramchandra Hazari & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Diwakar Upadhyaya

For the Respondent/s : Mr.

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

3 07-02-2017 Heard the learned counsel for the petitioner and the
learned counsel for the respondents.

Perused the impugned order dated 08.04.2016 passed
by the learned District Judge, Bhagalpur in Misc. Appeal No.33 of
2014 whereby the learned District Judge has rejected the objection
petition filed by the petitioner objecting to the maintainability of
the Misc. Appeal against the order whereby the application under
Order VII Rule 11(a) C.P.C. was rejected.

The learned counsel for the petitioner submitted that the
petitioner filed partition suit. The respondents filed written
statement and then filed application under Order VII Rule 11(a)
C.P.C. praying for rejection of the plaint on the ground that there
is no cause of action which has been rejected by the court below
by order dated 01.11.2013. This order was challenged by the
defendant-respondent by filing miscellaneous appeal before the



District Judge. The present plaintiff-petitioner filed objection to the maintainability of the miscellaneous appeal.

The learned counsel for the respondents submitted that since rights of the parties have been decided by the order, therefore, it was appealable and the learned court below has rightly held that miscellaneous appeal is maintainable.

It is admitted fact that rejection of a plaint under Order VII Rule 11 C.P.C. is a decree within the meaning of term “decree” defined under Section 2 sub-section 2 C.P.C. However, it has been held by the Supreme Court in the case of **Liverpool and London S.P. and I Asson. Ltd. vs. M.V. Sea Success I and Anr. (2004) 9 Supreme Court Cases 512** that an order refusing to reject the plaint is not a decree rather it is in the nature of preliminary judgment and against judgment, appeal is not maintainable.

So far miscellaneous appeal filed under Order 43 is concerned, the order refusing to reject plaint under Order VII rule 11 C.P.C. is not appealable and there is no other provision in C.P.C. for filing miscellaneous appeal against the said order.

In my opinion, therefore, the learned District Judge has wrongly admitted the miscellaneous appeal for final hearing rejecting the objection raised by the petitioner. In fact, the



miscellaneous appeal before the District Judge is not maintainable and, therefore, the order admitting the appeal is without jurisdiction.

Accordingly, this civil miscellaneous application is allowed. The impugned order is set aside and it is held that the miscellaneous appeal before the District Judge is not maintainable. However, the respondents, if so advised, may initiate appropriate proceeding before the appropriate forum challenging the said order.

(Mungeshwar Sahoo, J)

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