

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.93 of 2016**

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Smt. Sunaina Devi

.... Appellant/s

Versus

Sri Teetar Singh & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rahul Kumar

For the Respondent/s : Mr.

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

3 08-02-2017 Heard learned counsel for the petitioner and learned
counsel for the respondents.

Perused the impugned order dated 06.01.2016 passed
by Subordinate Judge-I, Hilsa in Execution Case No.01 of 2008
arising out of Title Suit No.13 of 2005 whereby the learned
court below has directed to effect delivery of possession with
assistance of the magistrate and police officials.

The learned counsel for the petitioner submitted that
in fact the petitioner is the owner of the property but she has not
been made party in the suit and the decree has been obtained
fraudulently without making her party. Therefore, she has filed
application under Order 21 Rule 97, 99 and 101 CPC.
Therefore, if the order is allowed to stand then naturally it will
cause irreparable loss to the petitioner.



On the other hand, the learned counsel for the respondents submitted that this objection application has been filed subsequent to order passed by the court below.

Perused the order dated 06.01.2016. It appears that the application under Order 21 Rule 97, 99 and 101 CPC has been filed on 28.03.2016 i.e. subsequent to order dated 06.01.2016 which is impugned. On the date of passing impugned order the petitioner was not party. From perusal of the impugned order, it appears that the court below considering the fact that the decree-holder has filed application for issuance of writ of delivery of possession and to avoid breach of contract at the spot directed to effect delivery of possession with assistance of the magistrate and police officials. Therefore, it appears that the order passed by the court below is in a routine manner. It further appears that the petitioner is the wife of judgment debtor-respondent no.2.

In view of the above facts and circumstances of the case when the petitioner was not present on the date of impugned order and her objection is dated 28.03.2016, the petitioner is at liberty to press her objection application before the court below but so far the order impugned is concerned,



there is no illegality nor there is any procedural impropriety nor it suffers from any jurisdictional error.

Thus, this civil miscellaneous application is dismissed.

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(Mungeshwar Sahoo, J)

