

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1092 of 2016

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1. Jitendra Prasad Shahi S/o Late Yogendra Prasad Shahi Resident of Village-Sahawajpur, Post-Bhikahanpur Kothi P.S. Ahiyapur, District-Muzaffarpur

.... Petitioner/s

Versus

1. Sukeshwer Thakur S/o Late Rameshwar Thakur Resident of Village-Adampur Nisf @ Bhawanipur, Post-Hathauri, District-Muzaffarpur at Present R/o Sahawajpur (Near Durgasthan Chauk) P.S. Ahiyapur, P.O. Bhikhampur Kothi, District-Muzaffarpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kaushlendra Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

5 21-12-2017 Heard Mr. Kaushlendra Kumar Sinha, learned counsel for the petitioner and Mr. Vaidehi Raman Prasad Singh, learned counsel for the respondent.

The plaintiff filed suit for specific performance of contract. The petitioner filed the petition that on the basis of the averment made in the plaint, the suit is barred by law of limitation as the deed of agreement of sale was executed in the year 1995 but the plaintiff by forging the receipts of money on the back of deed of agreement to sale showed the cause of action in the year 2004 and filed the suit in the year 2005 although, the period for filing the suit for specific performance of contract from the date of execution of the deed of agreement to sale is three years. The



learned Munsif dismissed the petition of the petitioner holding that the question of limitation is mixed question of law and fact and issues have not been framed as yet.

Mr. Kaushlendra Kumar Sinha, learned counsel for the petitioner submitted that learned Munsif has committed jurisdictional error while not deciding the question of limitation at the first instance but I find no jurisdictional error in the order as the question of limitation is a mixed question of law and fact and the question of limitation shall be decided along with other issues in the suit.

Accordingly, I do not find any jurisdictional error in the order and the civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

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