

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.205 of 2016

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Ram Nandan Singh

.... Appellant/s

Versus

Ram Naryan Prasad Yadav

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dronacharya

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 respondent.

Perused the impugned order dated 30.01.2016 passed
by learned Munsif, Nawada in Title Suit No.86 of 2008 whereby
the learned Munsif has refused to mark the memorandum of
partition as an exhibit in the case on the ground that the said
memorandum of partition is not registered under the Registration
Act.

The only grievance of the petitioner is that the court
below could not have refused to mark the document only on the
ground that it is not registered. In view of the decision of the
Supreme Court, **A.I.R. 1998 Supreme Court 881** memorandum
of partition is not at all required to be registered compulsorily.

On the other hand, learned counsel for the respondent
submitted that in fact the suit property is in possession of
respondent after purchase in the year 1983. When he is in



possession of the property after purchase since 1983, there is no question of partition in the year 1990 arises.

The question raised by the respondent is only question of merit as to whether this document can be relied upon or not but from perusal of the impugned order it appears that the court below has not considered at all as to whether this document is relevant for determination of real questions involved in the case between the parties for decision. Only on technical ground it has been rejected. The courts below have got inherent jurisdiction under Section 151 CPC to admit documentary evidence, if it is relevant and is necessary for deciding real controversy between the parties. In this light, the court below has not examined the matter at all. Therefore, it is desirable that the court below should examine the matter in the light of the decision of the Supreme Court, **(2011) 11 Supreme Court Cases 275** and pass a fresh order according to law.

Thus, this civil miscellaneous application is allowed. The impugned order is set aside. The matter is remanded back to the court below for passing a fresh order after examination of settled principles of law laid down by the Supreme Court referred to above, after hearing the parties.

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(Mungeshwar Sahoo, J)

