

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1765 of 2017**

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Kauleshwar Sah, S/o Late Brij Bihari Sah, resident of Mohalla- Goushganj
(Gangipul Par), P.S.- Town Thana, District- Bhojpur.

... .. Appellant/s

Versus

Sunita Devi, Wo Rakesh Singh, resident of Village- Bakhorapur, P.S.-
Barhara, District- Bhojpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 03-04-2018 Heard the learned counsel for the petitioner.

The petitioner has filed this Civil Misc. petition against the order dated 28.02.2017 passed by learned Sub-Judge-VI, Ara in Misc. case No. 24 of 2012 by which the petition of petitioner filed under Order 21 Rule 97 of the C.P.C. has been dismissed.

The petitioner was defendant in the Title Suit No. 331 of 2010. The plaintiff got judgement and decree in the said Title Suit ex parte. Thereafter, the petitioner filed petition resisting the delivery of possession by filing petition under Order 21 Rule 97 of the C.P.C.

The learned counsel for the petitioner submits that stranger of the suit includes the judgement-debtor and placed reliance on the judgement of the Supreme Court in the case of



Brahmdeo Choudhary v. Risikesh Prasad Jaiswal reported in **AIR 1997 SC 857**. He has also placed reliance on the judgement of Apex Court in the case of **Bhanwarlal v. Satya Narayan** reported in **AIR 1995 SC 358**.

Admittedly, the petitioner is defendant of Title Suit No. 331 of 2010. Order 21 Rule 97 of C.P.C. says that when resistance or obstruction to possession of immovable property put forth and resisted the possession of immovable property by any person in obtaining possession of the property he may make the application to the court complaining such resistance or obstruction. Rule 102 of Order 21 says that the judgement-debtor or any person to whom the judgement-debtor has transferred the property after the institution of the suit cannot resist or obstruct in obtaining possession. Therefore, I find that the court has rightly held that since the petitioner is judgement-debtor, the petitioner has got no right to resist the delivery of possession by filing petition under Order 21 Rule 97 of the C.P.C.

I find no merit in this Civil Misc. petition and the same is dismissed.

BKS/-

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(Prabhat Kumar Jha, J)

