

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.269 of 2016**

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Gyani Paswan & Ors

.... Appellant/s

Versus

Vidyanand Singh & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ratna Deep Prasad

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA**

ORAL ORDER

5 11-04-2018 Heard both sides.

The petitioners filed this civil miscellaneous petition against the order dated 19.01.2016 passed in Title Suit No.385 of 1998 by which the petition dated 17.08.2015 of the defendant was allowed.

Learned counsel for the petitioners submits that the petitioners earlier filed a suit but the same was dismissed. The petitioner again filed a petition under Order IX Rule 13 C.P.C. for setting aside the dismissal order but the same petition was also dismissed. Thereafter, the petitioners filed Title Suit No.385 of 1998. The defendant appeared and filed petition on 17.08.2015 that the preliminary issue be framed to decide the maintainability of the suit. The court below vide order dated 19.01.2016 allowed the petition of the defendant. Learned Court has passed the order without giving any reason. The maintainability of the suit shall be



decided along with other issues as the same is mixed question of fact and law.

On the other hand, learned counsel for the respondents supported the order of the learned Sub Judge but on perusal of the order itself, it appears that the order reflects non application of mind on the part of the Presiding Officer and does not disclose any reason.

Therefore, I find that the order is illegal and unsustainable. The order dated 19.01.2016 is set aside. This civil miscellaneous petition is allowed. Let the preliminary objection of the defendant be decided along with the other issues.

(Prabhat Kumar Jha, J)

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