

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CIVIL MISCELLANEOUS JURISDICTION No.837 of 2017**

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Hafiz Md. Minhajuddin, son of Late Moulana Abdul Matin, resident of Mohalla-  
Basar Bigha, Town Biharsharif, Post Office- Biharsharif, Police Station-  
Biharsharif, District- Nalanda.

.... .... Petitioner

Versus

1. Md. Ilias, son of Late Md. Ismaiel, resident of Mohalla- Banaulia, Town  
Biharsharif, Post Office Biharsharif, Police Station- Biharsharif, District-  
Nalanda.
2. Md. Mohiuddin, son of Late Maulana Abdul Matin, resident of Mohalla- Basar  
Bigha, Town Biharsharif, Post Office Biharsharif, Police Station- Biharsharif,  
District- Nalanda.

.... .... Respondents

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**Appearance :**

For the Appellant/s : Mr. Khatim Reza  
For the Respondent/s : Mr.

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

ORAL JUDGMENT

**Date: 30-03-2018**

Heard both sides.

The petitioner has filed this Civil Miscellaneous petition  
against the order dated 21.01.2017 passed in Execution Case No.2 of  
2010 by which the petition of the petitioner for considering the facts  
that the stamp on which the agreement to sale was executed was not  
valid and on this ground the suit should have been dismissed.

Learned counsel for the petitioner submits that the  
petitioner could not raise this point during the pendency of this suit  
and learned court below has illegally dismissed the petition of the  
petitioner, which requires consideration.



I find no force in the submission of learned counsel for the petitioner. Admittedly, the plaintiff filed Title Suit No.01 of 1986 for Specific Performance of Contract. The suit was decreed and the judgment and decree passed by the trial court in T.S. No.1 of 1986 was confirmed up to the Hon'ble Apex Court. The defendant never raised this objection that the stamp on which the agreement to sale was executed was not valid during pendency of the suit, and therefore, his plea to raise this fact again is barred by constructive resjudicata as contained under Order 2 Rule 2 of the C.P.C., therefore, I do not find any merit in this Civil Miscellaneous petition and accordingly, the same is dismissed.

**(Prabhat Kumar Jha, J)**

Amit/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 03-04-2018 |
| Transmission Date | NA         |

