

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1300 of 2016

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1. Musafir Singh
2. Raj Kumar Singh Both are Sons of late Saryu Singh
3. Satendra Singh Son of Ramashish Singh All are Residents of village
Dhewahi, P.O. Khairadeep, P.S. Daudnagar, District Aurangabad.

.... Appellant/s

Versus

1. Shiv Shankar Goswami Son of late Jangali Goswami, Resident of
Village+P.O.& P.S.- Daudnagar, District Aurangabad.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

5 22-06-2018 Heard the learned counsel for the petitioners and the
respondent.

The petitioner has filed this petition against the order dated 28.09.2016 passed by the learned District Judge, Aurangabad, in Misc. Appeal No. 06 of 2016 by which the learned Dist. Judge, Aurangabad, set aside the order of the Munsif, Aurangabad, passed in Misc. Case No. 02 of 2015 by which the Munsif, Aurangabad dismissed the Misc. Case with a direction to the petitioner to present the miscellaneous case before the Munsif, Daud Nagar.

The respondent filed a petition under Order 23, Rule 3A to set aside the judgment and decree passed on the basis of



compromise in Title Suit No. 12 of 2005. The Munsif dismissed miscellaneous petition on the ground that since the court of Munsif has already established at Daud Nagar and the property of the suit is situated in Daud Nagar. Therefore, miscellaneous case should have been filed before the Munsif, Daud Nagar. The respondent preferred miscellaneous appeal before the District Judge, Aurangabad, bearing Misc. Appeal No. 06 of 2016. The District Judge, Aurangabad allowed the appeal and set aside the order of Munsif and ordered to transfer miscellaneous appeal to the court of Munsif, Daud Nagar.

Learned counsel for the petitioners submit that in view of the provision as contained in Order 23, Rule 3A of C.P.C no order passed in miscellaneous case by the Munsif, Aurangabad for setting aside the order on the basis of compromise is appealable. It is further submitted the newly amended Rule 1(a) of Order 23 Rule 3 A says that if any party to any compromise decree is aggrieved, by such order an appeal shall lie and the same shall be questioned in a miscellaneous case. It appears that the learned Munsif, before whom miscellaneous case was filed for setting aside the compromise decree should have sent the case record to the Court of Munsif, Daud Nagar, in absence of territorial jurisdiction instead by dismissing the same. The learned District



Judge simply transferred the Misc. Case No. 02 of 2015 to the Court of Munsif, Daud Nagar with a direction to pass a fresh order on its own merit after setting aside the order of the Munsif.

I find that mere nomenclature of the case does not make the order illegal. The District Judge has rightly ordered for transferring of Misc. Case No. 02 of 2015 to the Court of Munsif, Daud Nagar. Accordingly, this miscellaneous petition is dismissed. The petitioner may raise all objection before the Munsif, Daud Nagar about maintainability of miscellaneous case.

(Prabhat Kumar Jha, J)

AnilKrSinha/Sneha

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