

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1403 of 2025

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Ajay Kumar Gupta Son of Late Banarsi Lal, Reident of Ashok Raj Path,
Opposite Kulhariya Complex, Mini Market, P.S. Pirbahore, District- Patna.

... .. Petitioner/s

Versus

Gaurav Kumar Son of Late Bhola Prasad Kashyap, Resident of Ashok Raj
Path, Opposite Kulhariya Complex, Mini Market, P.S. Pirbahore, District-
Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abinash Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL ORDER

2 11-11-2025 The present Civil Miscellaneous application has

been preferred for setting aside the order dated 25.08.2025

passed by learned Sub-Judge IInd, Patna in Misc. Case No. 86

of 2024, whereby learned Court below has not considered the

objection petition dated 03.01.2025 of this petitioner properly

which was limited to the maintainability of Misc. Case though

erroneously held that the same will be decided only after full

fledged trial.

2. Learned counsel for the petitioner submits that

Title Suit No. 451 of 2022 was filed by the petitioner/plaintiff

against the respondent/defendant in which ex-parte decree

has been passed on 22.02.2024. Assailing the aforesaid ex-

parte order, above misc. petition has been filed by the



respondent (defendant therein) under the provision of Order IX Rule 13 of CPC. In that proceeding, petitioner has appeared as opposite party and filed his objection petition, his main thrust of argument is that the aforesaid miscellaneous petition is not maintainable because it is barred by limitation and the defendant who is petitioner in miscellaneous case had full knowledge about the Title Suit No. 451 of 2022, because he has admitted this fact in his anticipatory bail application.

3. After hearing the parties, learned Trial Court has held that all the above issues can be decided on the basis of evidence adduced by the parties, at the time of final hearing and not at this stage.

4. During course of argument, learned counsel for the petitioner has cited the following judgments of Hon'ble the Patna High Court in support of his contentions:-

- (i). Mostt. Rama Devi Vs. Ganga Ram Yadav and others, 2006(4) PLJR 161.
- (ii). Brijendra Narayan Prasad Singh Vs. Karamchand Sah, 2000(1) PLJR 801.
- (iii). Munna Lal Gupta Vs. Ram Babu Choudary and another, 2006(4) PLJR 94.
- (iv). Smt. Tribeni Devi and Ors. Vs. Chaturbhuj Khemka and Ors., 1997 (1) PLJR 235.
- (v). Kameshwar Prasad Singh Vs. Rajendra Upadhya



and another, 2001(3) PLJR 396.

5. It is a well settled principle of law that a case or suit must be decided on its merit and no party having even the slightest interest in the suit property should be deprived of the opportunity to contest the same. In the aforesaid Title Suit No. 451 of 2022, the judgment and decree has been passed ex-parte against the respondent/defendant who deserves a fair opportunity of being heard and place his case before the Court. No summon was properly served regarding the aforesaid Title Suit to the respondent and this issue can be well decided after taking evidence of both the parties and not on the basis of a mere admission in any bail application as argued by the learned counsel for the petitioner.

6. Therefore, in the interest of justice and for proper and complete adjudication of this case, an opportunity is given to respondent/defendant to contest the Title Suit No. 451 of 2022 in which the above argument of knowledge on the basis of anticipatory bail filed by the respondent/defendant can be decided which is one of the grounds of present petitioner in the above miscellaneous case. The above contention of the petitioner may be decided that at the time of disposal of Misc. case that whether the admission of respondent/defendant have



any relevancy or legal force regarding knowledge of the
aforesaid Title Suit No. 451 of 2022 or not.

7. Accordingly, the instant Civil Miscellaneous
application stands disposed of.

(S. B. Pd. Singh, J)

Ankit Kumar/-

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