

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20657 of 2014

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Shail Kumari Devi

.... Petitioner/s

Versus

Ram Naresh Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 18-12-2015

At the time of hearing of the I.A. No.7973 of 2015, the learned counsel, Mr. Naresh Chandra Verma for the petitioner submitted that the writ application itself may be heard on merit in admission matter. Accordingly, I heard him on merit in admission matter.

The defendant No.8 has filed this application under Article 227 of the Constitution of India against the order dated 21.08.2013 and 25.07.2014 passed by learned Sub Judge VIII, Hajipur in Partition Suit No.409 of 1999.

The learned counsel for the petitioner submitted that by terms of order dated 23.11.2000, the Court directed both the parties to maintain status quo in respect of the suit property but in violation of the said order, the plaintiff sold the property to interveners and thereafter the purchaser filed intervention application which has been allowed by the order dated 21.08.2013



without hearing the petitioner. Therefore, the petitioner filed application for recall of the said order which was rejected on 25.07.2014. The learned counsel relied upon the decision of the Supreme Court in the case of **Surjit Singh and others etc. etc. v. Harbans Singh and others etc. etc., AIR 1996 Supreme Court 135** and submitted that the Hon'ble Supreme Court has held that a transferee *pendente lite* cannot claim as a matter of right for being impleaded as party in the suit particularly when there had already been injunction order.

Perused the order passed by the Court below. Admittedly, in this present case, the plaintiff is not aggrieved against the order. The defendant is objecting to the addition of the party.

Perused the order dated 23.11.2000 also. It appears that the parties were directed to only maintain status quo. From perusal of the decision of the Supreme Court, it appears that in that case, preliminary decree was passed and thereafter an injunction order was passed to the effect that while proceeding for passing a final decree, the trial Court restrained all the parties from alienating or otherwise transferring in any manner any part of the property involved in the suit. In the present case, neither there is clear injunction order nor there is preliminary decree.

The Hon’ble Supreme Court in the case of **Amit Kumar Shaw and another v. Farida Khatoon and another, AIR 2005 Supreme Court 2209** has held that “though the plaintiff is under no obligation to make a lis pendens transferee a party; under O. 22, R. 10 an alienee pendente lite may be joined as party, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests.”

Therefore, I find no merit in this application and accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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