

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8804 of 2011

=====

Ram Krishna Mandal & Ors

.... Petitioner/s

Versus

Sudhir Prasad Verma & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Purnendu Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

21 27-10-2015 **1.** Heard the learned counsel, Mr. Purnendu Singh, on behalf of the petitioners.

2. This application under Article 227 of the Constitution of India has been filed by the 24 petitioners challenging the order dated 16.04.2007 passed by learned Subordinate Judge IV, Supaul in Title Suit No.2 of 1992 whereby the Court below has rejected the intervention application filed by the petitioners under Order 1 Rule 10 sub Rule 2 C.P.C. for being added as party defendant in the suit.

3. It appears that the plaintiff-respondent filed the suit for declaration of title and confirmation of possession over the suit property. The defendants appeared and filed contesting written statement denying the case of the plaintiff. The defendants claimed their title on the basis of settlement made by the admitted

landlords, namely, Thakur Prasad Singh, Sri Chintamani Singh.

4. The present petitioners filed application alleging that in fact they have purchased the property from the ex.landlord, Thakur Prasad Singh and other owners of the property and they annexed the registered sale deed, rent receipt etc., to show prima facie title over the suit property. By the impugned order, the Court below has rejected the application.

5. The learned counsel for the petitioner submitted that the Court below while rejecting the application filed by the petitioners wrongly observed that the petitioners had the knowledge about the pendency of the title suit which is of the year 1992 but the application has been filed by them after such a long period. According to the learned counsel, in fact the petitioners had no knowledge and when they came to know about the fact that their lands have also been included in the suit filed by the plaintiff-respondent for declaration of title and confirmation of possession then filed the application but the Court below without considering the legal position had rejected the application and thereby has not exercised jurisdiction vested in it by law.

6. The Hon'ble Supreme Court in the case of **Mumbai International Airport Private Ltd. vs. Regency Convention**

Centre and Hotel Pvt. Ltd (2010) 7 SCC 417 at paragraph 22 has held that **‘Rule 10 sub Rule 2 of Order 1 is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the Court to strike out or add parties at any stage of a proceeding. In exercising its judicial discretion under the said rule, the Court will of course act according to reason and fair play and not according to whims and caprice.**

In the present case, the petitioners produced the sale deeds in support of their claim that part of the property are their self acquired property purchased by the registered sale deeds and some are their ancestral property but the Court below rejected only on the ground of delay and assuming that the petitioners had falsely alleged that they had no knowledge about the suit. It further appears that the Court below, no doubt, has observed that various documents have been produced by the petitioners but they concealed these documents for long period and now, they are producing the same. In my opinion, these are not the grounds of rejection of the application filed by the petitioners. Therefore, the impugned order dated 16.04.2007 passed by the learned Subordinate Judge IV, Supaul in Title Suit No.2 of 1992 is hereby set aside. The matter is remanded back to the Court below for a fresh decision according to the law considering the submission of

the learned counsel for the petitioners that the petitioners are either purchaser or are descendants of the original owner of the property. If the Court below will find that the petitioners have got any semblance of title over the property, the Court below shall allow the application.

7. Accordingly, this writ application is allowed and the matter is remanded as indicated above.

(Mungeshwar Sahoo, J)

Sanjeev/-

U		T	
---	--	---	--