

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2632 of 2013

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Anwari Khatoon @ Bibi Anwari Khatoon W/O Md. Mabroor Alam R/O
Village- Chandardai, P.S.- Araria, District- Araria.

.... Petitioner/s

Versus

1. Mir Sajjad S/O Late Zamilur Rahman.
2. Bibi Sabnam W/O Md. Sawood Alam both R/O Village- Basantpur
Azad Nagar, Ward No. 12/20, P.S. And District- Purnea.
3. Mehzabi W/O Md. Sajjad Hussain.
4. Hasnain S/O Moin Uddin both R/O Village- Belwa, Islam Nagar, P.O.
& P.S.- Araria, District- Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Ziaul Quamar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 21-12-2015 Heard the learned counsel for the petitioner and the

learned counsel for the respondents.

Calling in question the impugned order by which the
prayer of the petitioner for addition as a party in the appeal has
been turned down, the present application under Article 227 of the
Constitution of India has been filed.

There is no dispute to the fact that a suit for partition
was filed by the vendor of the present petitioner against the
defendants. The said suit was decreed on 06.06.2007 and
thereafter the defendants have filed T.A. No. 35 of 2007. There is
also no dispute to the fact that the present petitioner has purchased

the suit property by registered sale deed dated 21.05.2008 executed by the plaintiff during the pendency of the title appeal. The present petitioner thereafter filed the petition on 06.01.2011 praying before the court for his addition as party. By the impugned order, the learned court below has rejected the said petition.

The learned counsel for the petitioner has submitted that as the petitioner is a purchaser from the plaintiff, therefore, the learned court below should have allowed his prayer to be added as party. It has been further pointed out that the learned court below by another order has allowed the prayer of the purchasers of the defendants to be added as party and, therefore, the prayer of the petitioner should have also been allowed.

After careful consideration of the matter and the submission on behalf of the petitioner, it is manifest that the petitioner has purchased the part of the suit property from the plaintiff of the partition suit during the pendency of the appeal. It is not the case of the petitioner that he was ignorant of the pending appeal against the decree for partition wherein the property purchased by him is also one of the suit properties. It is, therefore, further apparent that the petitioner has purchased the litigation and cannot claim it as a right to be impleaded as a party. It is also not the case of the petitioner that the vendor of the petitioner has not

been looking after the proceeding of the appeal carefully rather the learned court below has recorded the finding that the respondent no. 1, vendor of the petitioner, has been making pairvi in the appeal. In view of the provision of Order 1 Rule 10 (2) C.P.C., it does not appear that the present petitioner who is purchaser from the plaintiff is either a necessary party or a property party at the appellate stage and his presence before the Court is necessary for complete and effective adjudication of all the questions arising between the parties. The submission that some of the purchasers of the defendants have been added as a party cannot be a ground for claiming his addition as a party being the purchaser from the plaintiff. This Court therefore, is not inclined to interdict the impugned order.

The writ application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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