

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.328 of 2016

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Pintu Mishra

.... Appellant/s

Versus

Madan Mohan Mishra & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shashi Nath Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 06-12-2016 Heard the learned counsel, Mr. T. N. Maitin, for the petitioner and the learned senior counsel, Mr. K. N. Chaubey, for the respondent No.1.

Perused the impugned order dated 17th February, 2016 passed by the learned Sub Judge Ist, Madhubani in Misc. case No.11 of 2015 whereby the learned Court below rejected the application filed by the present petitioner under Order 1 Rule 10(2) CPC for being added as party in Misc. Case No.11 of 2015.

It appears that the plaintiff respondent No.3 filed title suit for declaration of title and confirmation of possession. The suit was decreed as ex.-parte. Thereafter, the respondent No.1 filed application under Order 9 Rule 13 CPC for setting aside the ex.-parte decree passed in the suit. The present petitioner filed an application for being added as party in Misc. case on the ground that after the decree, the plaintiff has sold the suit property to him



and, therefore, the petitioner has direct interest in the suit property. The Court below by the impugned order dated 17th February, 2016 rejected the said application on the ground that the petitioner is a stranger as the Misc. case has been filed to set aside the ex.-parte judgment and decree and it is not going to decide the title in favour of any of the party in the Misc. case. The petitioner may choose to appear in the said title suit, if so desires and it is premature to allow him to be impleaded as intervener. In my opinion, the approach of the Court below is wrong. Since the vendor has already transferred the title to the present petitioner, the petitioner has now stepped into the shoes of the vendor. The vendor may not appear in the case or may collude with the respondent No.1 in the Misc. case because whatever statements will be made by the vendor in the Misc. case will not be binding on the present petitioner because at this stage, the vendor has nothing to do with the property as he has already parted his interest.

If the impugned order is allowed to stand then naturally it will cause hardship to the petitioner. The only grievance of the respondent No.1 is that he may appear in the suit. Now, if he will appear in the suit then there is no difference why he should not be allowed to be added as party in the Misc. case. Therefore, if the impugned order is allowed to stand then naturally it will cause



prejudice to the petitioner and it may happen that the Misc. case may be decided ex.-parte.

In the result, this Misc. application is allowed. The impugned order is set aside and the petitioner is added as opposite party in the Misc. case No.11 of 2015 pending in the Court of Sub Judge Ist, Madhubani.

(Mungeshwar Sahoo, J)

Sanjeev/-

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