

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.617 of 2016**

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Sri Ram Janki Jee

.... Appellant/s

Versus

Baij Nath Rai & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravi Shanker Pankaj

For the Respondent/s : Mr. Kameshwar Pd.Gupta Gp-10

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 16-09-2016

Heard learned counsel, Dr. Amrendra Kumar,

appearing for the petitioner, learned Senior counsel, Mr. Ganpati Trivedi, appearing for the respondent No.9, the Bihar State Board of Religious Trust and learned G.P.-10 appearing on behalf of respondent Nos.10 and 11.

2. Perused the order dated passed by the Sub-Judge-V, Sitamarhi in T.S. No. 230 of 2002, whereby the court below has rejected the application filed by the plaintiff-petitioner for striking the name of defendant Nos.8 and 10 to 17, who are respondent Nos. 12 to 20 in this civil miscellaneous application on the ground that earlier same type of application has already been rejected.

3. Learned counsel for the petitioner submitted that since there has been no reconstitution of the committee as it is not in existent, therefore, the aforesaid defendants-respondents are not necessary party in the present suit filed by the petitioner for

declaration that the sale deed executed by respondent Nos. 6, 7 and 8 in favour of the defendant first party. The learned counsel further submitted that the said defendants-respondents have not appeared in the case in the court below but the learned court below erroneously rejected the application filed by the petitioner.

4. On the other hand learned counsel appearing for the Board as well as the State submitted that there is no illegality in the impugned order and, therefore, in exercise of supervisory jurisdiction, same cannot be interfered with.

5. It may be mentioned here that the plaintiff has filed the suit seeking declaration with respect to the sale deed executed by the defendants fourth party in favour of defendants first party. The plaintiff also prayed for declaration of title and recovery of possession and further for declaration that the committee formed by the Religious Board is illegal. The concerned parties are here to contest the suit. Further the plaintiff is seeking deletion of the name of the said defendants on his own risk. In such circumstances, when the plaintiff is not desirous of fighting the case against the said defendants-respondents and when he has not prayed for any relief against them there is no reason as to why he should be compelled to fight the suit against them. At best if at all they are necessary party in the suit, the defendants may raise this

question that the suit filed by the plaintiff is bad for non-joinder of necessary party and the aforesaid defendants whose names have been deleted are necessary party in the suit and that in their absence, the relief sought for by the plaintiff cannot be granted effectively in favour of the plaintiff.

6. In the present case, as stated above, the suit is of the year 2002 but still the defendants-respondents have not appeared in the case. The contesting defendants are there and they are fighting the case. The very formation of the committee is under challenge and the Board is contesting the suit. In the facts and circumstances of the case, in my opinion, the court below has wrongly refused to exercise the jurisdiction vested in it by law without considering the fact the plaintiff is the *dominus litis*.

7. In the result, this civil miscellaneous application is allowed and the impugned order is, hereby, set aside. The application filed by the petitioner for deleting the name of defendant Nos. 8 and 10 to 17, respondent Nos. 12 to 20 are, hereby, allowed.

Brajesh/-

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(Mungeshwar Sahoo, J)