

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.477 of 2016**

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Usha Rani

.... Appellant/s

Versus

Sudhanshu Kumar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jai Prakash Singh

For the Respondent/s : Mr.

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

2 02-09-2016

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. Perused the order dated 12.04.2016 passed by the
Sub-Judge-VI, Begusarai in T.S. No. 322 of 2013 CIS No. 2845 of
2013, whereby the learned court below rejected the application
filed by the petitioner under Order 1 Rule 10 C.P.C.

3. It appears that the admitted facts are that the
petitioner, herein, is also purchaser of the part of land of the same
plot and the plaintiffs of T.S. No. 322 of 2013 are also the sons of
purchaser of another part of the land of same part. The further
admitted fact is that the petitioner has filed T.S. No. 38 of 2009,
wherein the present plaintiffs of this title suit are defendants. The
petitioner in that suit has claimed that the respondents, herein, i.e.
plaintiffs of T.S. No. 322 of 2013 have encroached the portion of
the purchased land of the petitioner and, therefore, prayed for



removal of encroachment and eviction of the present plaintiffs-respondents. The further admitted fact is that the plaintiffs of T.S. No. 322 of 2013 have also filed T.S. No. 279 of 2009 praying for declaration of title on the ground of adverse possession on the portion of the property, for which, T.S. No. 38 of 2009 has been filed by the petitioner. Considering these aspects of the matter, both the suits, one filed by the petitioner and the other filed by the plaintiffs of T.S. No.322 of 2013 have been directed to be heard analogously.

4. The grievance of the petitioner is that this collusive partition suit has been filed with a view to increase the area of the land purchased by the mother of the parties so as to defeat the plaintiffs' suit filed for removal of encroachment. While rejecting the application under Order 1 Rule 10 C.P.C., the court below recorded some finding on merit without adding the present petitioner as party.

5. On the contrary, the learned counsel for the respondents submitted that the two suits are tagged together and that will be decided according to their merit but in a simple suit for partition, unless the present petitioner proved to have got any interest in the suit property, she cannot be added as party as for deciding the share of the parties, her presence is not at all

necessary and moreover, because the petitioner is not a party, any decree, may it be compromise decree, shall not affect the right, title and interest of the petitioner.

6. In view of the aforesaid facts and circumstances of the case and the order passed by the court below, in my opinion, for deciding the share of the parties in the present suit, which is filed between the plaintiffs and defendants, the presence of the petitioner is not necessary. However, any compromise decree or even contested decree, that may be passed in T.S. No. 322 of 2013, shall not affect the right, title and interest of the petitioner in the two suits, which are tagged together for analogous hearing. The finding, if any, recorded on merit by the court below in the impugned order shall also not prejudice any of the parties while hearing the two suits, which is to be heard analogously.

7. In view of the above facts and circumstances of the case, the impugned order needs no interference in exercise of supervisory jurisdiction. Thus, this civil miscellaneous application is dismissed with the aforesaid observations and directions.

Brajesh/-

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(Mungeshwar Sahoo, J)