

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.854 of 2016**

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Kameshwar Singh

.... Appellant/s

Versus

Pradeep Kumar @ Munna Kumar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Santosh Kumar Sinha

For the Respondent/s : Mr.

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

2 20-10-2016

Heard learned counsel, Mr. S.K. Sinha appearing for
the petitioner.

2. Peruse the impugned order dated 05.05.2016 passed
by the Sub-Judge-II, Buxar in T.S. No. 272 of 2007, whereby the
learned court below allowed the application filed by the
purchasers for being added as party in the suit.

3. Learned counsel for the petitioner submitted that the
purchase made by the purchasers during the pendency of the suit
will be hit by the principles of *lis pendens* as provided under
Section 52 of the Transfer of Property Act. The court below
committed mistake i.e. error apparent on the face of the record by
holding that the vendors of the purchasers have not filed written
statement but defendant No.11, who is one of the vendor of the
purchasers, has already filed written statement. Therefore,
purchasers should not have been added as party in the suit filed by

the plaintiff-petitioner. According to the learned counsel for the petitioner, the plaintiff has filed the suit for declaration of title with respect to the suit property and the purchasers have already purchased part of the suit property.

4. Perused the order. From perusal of the impugned order, it appears that the court below considered these aspects of the matter. So far error apparent on the face of the record is concerned, it may be a mistake but it will not affect the right of the purchasers for being added as party.

5. The Hon'ble Supreme Court in the case of ***Amit Kumar Shaw & Anr. Versus Farida Khatoon & Anr.*** reported in ***AIR 2005 SC 2209*** has held that a transferee *pendente lite* to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant, the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a *lis pendens* transferee a party, under Order XXII Rule 10 an alienee *pendente lite* may be joined as party. The Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests.

6. This view has been followed by this Court in **2011 (2) PLJR 547** and it has been held that for adding a *lis pendens* transferee a party, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interest

7. In the present case, at our hand, an application has been filed by the transferee under Order 22 Rule 10 C.P.C. From perusal of the impugned order, it appears that the court below considered that they are transferee and got interest in the property and, therefore, the court below has rightly exercised the judicial discretion. Thus, it needs no interference in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

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(Mungeshwar Sahoo, J)