

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3011 of 2014

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Anand Kishore

.... Petitioner/s

Versus

Rajeshwar Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bajarangi Lal

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 08-01-2016

Heard learned counsel, Mr. Bajrangilal, for the petitioner.

By the impugned order dated 18.12.2013, the learned sub-Judge VI, Sasaram at Rohtas in Title Suit No. 48 of 2009 allowed the application under Order I Rule 10 C.P.C. filed by the intervener for being added as party defendant in the aforesaid suit.

The learned counsel for the petitioner submitted that the intervener being the purchaser of portion of the suit property during the pendency of the lis has no right to be added as a party and, therefore, the Court below has wrongly allowed the application. The learned counsel relied upon a decision of the Supreme Court in the case of *Bibi Zubaida Khatoon Versus Nabi Hasan Saheb 2004 (1) PLJR 66 S.C.*



From perusal of the decision relied upon by the learned counsel for the petitioner it appears that in that case the application was rejected by the trial court. Considering the facts of that case the Supreme Court also held that “***There is no absolute rule that transferee pendente lite without leave of the Court should in all cases be allowed to join and contest the pending suits***”. Therefore, it can be said that in all cases the application of the transferee for being added as party should be rejected. In other words the settled principle of law is that in the facts and circumstances of each case, the matter is to be examined. Subsequently the Hon’ble Supreme Court in the case of ***Amit Kumar Shaw Versus Farida Khatoon AIR 2005 Supreme Court 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 22 Rule 10 an alienee *pandente 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.” This decision is not in any way contrary to the decision relied upon by the learned counsel for the petitioner.

Considering the fact of the present case Court below has exercised a discretionary jurisdiction. In such circumstances, the impugned order can not be interfered with particularly when the Court below has exercised sound judicial discretion.

Thus this writ application is dismissed.

(Mungeshwar Sahoo, J)

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