

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.954 of 2016**

=====

Harendra Rai

.... .... Appellant/s

Versus

Ram Ayodhya Rai & Ors

.... .... Respondent/s

=====

**Appearance :**

For the Appellant/s : Mr. Dilip Kumar Tondon

For the Respondent/s : Mr.

=====

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

3      07-12-2016                      Heard learned counsel Mr. D.K. Tondon for the  
petitioner.

Perused the impugned order dated 22.07.2016 passed  
by learned Additional District Judge-VIII, Motihari in Title  
Appeal No.17 of 2014 whereby the learned court below rejected  
the application under Order 1 Rule 10 of the Code of Civil  
Procedure filed by the petitioner for being added as party in the  
appeal.

It appears that the plaintiff-respondent filed suit for  
declaration of title against the defendants and non-title of the  
defendants. The suit was dismissed. The plaintiff then filed Title  
Appeal No.17 of 2014. Before the lower appellate court the  
present petitioner filed an application for being added as party on  
the ground that he is a co-sharer of the plaintiff, therefore, he  
should have been added as party in the title suit itself but the



plaintiff did not add him. The lower appellate court by the impugned order has rejected the application on the ground that for deciding the question of title of the plaintiff, the presence of the petitioner is not required. The petitioner has also filed separate Title Suit No.770 of 2015 for partition wherein the plaintiff is the party defendant.

Admittedly the present suit giving rise to title appeal is a suit for declaration of title of the plaintiff. The petitioner claimed that he is a co-sharer of the plaintiff. He has filed separate suit for partition where the question of share, partition etc. will be decided i.e. the title between the plaintiff and this petitioner will be considered but for deciding the title of the plaintiff and non-title of the defendants in the present suit, he was not necessary and in the appeal also he is not necessary, as so far his case is concerned, it is entirely a new fact which is to be considered by the court below if he is added as party without there being any pleading and evidence in support of his claim.

Thus, I find no reason to interfere with the impugned order. Accordingly, this civil miscellaneous application is dismissed.

**(Mungeshwar Sahoo, J)**

Harish/-

|   |  |  |  |
|---|--|--|--|
| U |  |  |  |
|---|--|--|--|

