

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2638 of 2016

In
C.R. 8 of 2016

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1. Smt. Mamta Devi D/o Krishna Nandan Prasad Yadav Resident of
Village/ Mohalla- Mahavir Colony, Ssi Chak, Beur, Ps. Beur, District Patna.

.... Petitioner/s

Versus

1. Dharmendar Kumar Son of Sri Ram Kumar Resident of Mohalla-
Shekhpura (District Sastrinagar), District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent/s : Mr. A.N. Choubey

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 25-02-2016 Heard learned counsel, Mr. Manoj Kumar, appearing
for the petitioner and learned counsel, Mr. A.N. Choubey,
appearing on behalf of respondents.

2. By the impugned order dated 15.02.2015, the learned
Sub-Judge-IV, Danapur, Patna rejected the intervention
application filed under Order 1 Rule 10 C.P.C. for being
impleaded as party in T.S. No. 111 of 2010.

3. It appears that the aforesaid suit was filed by the
plaintiff-respondent for declaration that the cancellation deed
cancelling power of attorney is forged and fraudulent and illegal
and is not binding on the plaintiff and further for declaration that
the plaintiff has the right to execute registered sale deeds of the

scheduled property and the agreement entered into between the plaintiff and third persons for sale on the basis of power of attorney is binding on the defendant No.1.

4. During the pendency of the suit, the present petitioner filed application for being added as party on the ground that she has purchased portion of the suit property from defendant No.1 in the year 2011 and 2012. The court below rejected the said application on the ground that the petitioner is neither necessary party nor proper party.

5. The learned counsel for the petitioner submitted that since the petitioner is the purchaser of a portion of the suit property of the present suit, she is vitally interested and if any, order is passed, it will be directory against the petitioner. In other words, the petitioner will be adversely affected and, therefore, her presence in the suit is necessary.

6. On the other hand, the learned counsel for the respondent relied upon the decision of the Supreme Court rendered in the case of *Mumbai International Airport vs. Regency Convention Centre and Hotel Pvt. Ltd* reported in **2010 (7) SC 417** and submitted that the plaintiff is the *dominus litis* and cannot be forced to make a person party in the suit against whom the plaintiff is not claiming any relief.

7. The Hon'ble Supreme Court in the aforesaid decision at paragraph No.13 has held that the general rule in regard to impleadment of parties is that the plaintiff in a suit being *dominus litis* may chose the persons against whom he wishes to litigate and cannot be compelled to chose a person against whom he does not seek any relief.

8. Therefore, in view of the above settled principle of law laid down by the Supreme Court, there cannot be any straight-jaket formula that a person, who has acquired property by registered sale deed from the owner during the pendency of the suit, can never be made party because the plaintiff is *dominus litis*. Admittedly, the petitioner has purchased part of the suit property during the pendency of the suit. The plaintiff is power of attorney holder and the real owner of the property is the defendant No.1. The suit has been filed for cancellation of the deed, whereby the defendant No.1 has already cancelled the power of attorney. The relief has also been sought for by the plaintiff to authorize him to register sale deeds with respect to the suit property out of which the petitioner has already purchased. Therefore, the Supreme Court in this paragraph has specifically stated that for doing justice between the parties and for deciding the dispute between the parties with respect to the suit property, necessary party or

proper party should be added as party.

9. The Hon'ble Supreme Court in the case of *Amit Kumar Shaw and another vs. Farida Khatoon and another* 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 and 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 interest. There is no contradiction between the decision of the Supreme Court relied upon by the respondent and the present decision of the Supreme Court. Therefore, since the petitioner is purchaser of a portion of the property during the pendency of the suit, in view of the this decision of the Hon'ble Supreme Court, the court below should have allowed the intervention application but failed to exercise the jurisdiction on erroneous ground, which has occasioned failure of justice and if the order is not allowed to that extent the petitioner

shall be greatly prejudiced and her right will be directly affected.

Thus, this writ application is allowed. Impugned order is set aside and, accordingly, the petitioner is added as party defendant in the suit.

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(Mungeshwar Sahoo, J)