

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1166 of 2016**

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Alay Banerjee

.... Appellant/s

Versus

Pancha Nand Banerjee & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar Singh

For the Respondent/s : Mr.

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

2 24-11-2016

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

2. Perused the impugned order dated 26.08.2016 passed
by the learned Sub-Judge-I, Bhagalpur in T.S. No. 165 of 2015,
whereby the learned court below has allowed the intervention
application filed by the intervener- respondent No.1.

3. Learned counsel for the petitioner submitted that the
learned court below has only held that the intervener-petitioner is
close to the deceased-defendant and, therefore added the
intervener as party in the suit for specific performance of contract
without considering the fact that the plaintiff is *dominus litis* and
moreover, the intervener is not heir of the deceased-husband of
Roma Mitra and, therefore, after death of Roma Mitra, the
petitioner had already added the real owner of the property on
whom the property in suit devolved.

4. On the other hand, learned counsel for the intervener submitted that many documents were produced in the court below to show that in fact the petitioner is heir of the said Roma Mitra and the court below has also observed that the documents were produced. Out of these documents, only two documents have been considered by the court below which prove that the Bank account was opened in the joint name of deceased-husband of Roma Mitra and the present petitioner.

5. From perusal of the impugned order, it appears that the court has not at all considered as to whether in a suit for specific performance of contract, the present petitioner is necessary party or not and whether he has got interest in the property in suit or not but only held that the intervener is close to the deceased-defendant. In my opinion, therefore, the court below has passed the order in the manner not permitted by law and without considering the provision of law and the documentary evidence produced by the plaintiff or the intervener. The court below has also not considered the devolution of property as contained in Section 15 of the Hindu Succession Act. The learned court below has also not considered the settled principle of law laid down by the Supreme Court in the case of ***Mumbai International Airport Ltd. Vs. Regency Convention Centre &***

Hotels Pvt. Ltd. & Ors. reported in ***2010(7) SCC 417.***

6. In the result, this civil miscellaneous application is allowed. The impugned order is set aside and the matter is remanded back to the court below for passing a fresh order according to law after hearing the parties.

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(Mungeshwar Sahoo, J)