

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3574 of 2015

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Pawan Kumar

.... Petitioner/s

Versus

Minu Kumari & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

5 29-03-2016

Heard the learned counsel, Mr. J.S.Arora for the petitioner and the learned counsel, Mr. Durga Nand Jha for the respondent Nos.5 and 6.

This application is heard treating the same as an application under Article 227 of the Constitution of India as writ application under Article 226 of the Constitution is not maintainable.

The defendant No.1-petitioner is challenging the order dated 21.11.2014 passed by Sub Judge I, Patna City in Title Partition Suit No.392 of 2013 whereby the learned trial court has allowed the intervention application filed by the respondent Nos.5 and 6.

The learned counsel, Mr. J.S.Arora submitted that the trial court has not considered various documents produced by the defendant No.1 to show that the interveners are not the son and



daughter of Late Sarjug Prasad and has only conceded the documentary evidences produced by the interveners. If the order is allowed to stand, it will complicate the matter and since in partition suit, the status of all the parties are same, the defendant has right to challenge the order passed by the Court below although, he is a defendant in the partition suit.

On the other hand, the learned counsel appearing on behalf of the interveners-respondent Nos.5 and 6 submitted that the plaintiff is not challenging the order whereby the interveners have been added as party. The Court below has passed the reasoned order considering the submissions of the parties and also the documentary evidences produced by the interveners.

Perused the order. Admittedly, the plaintiff-respondent No.1 is not challenging the order impugned in this writ application whereby the interveners have been added as party-defendant. The defendant is challenging regarding the parentage of the interveners. According to the learned counsel, many documents were produced to show that the interveners are not the son and daughter of Late Sarjug Prasad whereas the Court below has considered the documents produced by the interveners and has come to the conclusion that prima facie they appear to be the son and daughter of Sarjug Prasad. Therefore, the question is

whether the adequacy or inadequacy of the evidence is a ground for interference in supervisory jurisdiction. Certainly when the Court below has recorded a finding prima facie on the basis of materials produced before the Court and came to the conclusion that they appears to be the son and daughter of Late Sarjug Prasad, for supervising the said order this Court cannot exercise the supervisory jurisdiction particularly when the plaintiff who is dominus litis has not challenged the order passed by the Court below.

This Court in 1998(3) PLJR 13 has held that intervenor per se does not in any way prejudice the defendant, as such, defendant has no locus standi to challenge the addition of party if right to oppose and addition of parties is conceded to the defendant then it ensues that he may rightfully seek addition of a person who is not a party against the wish of the plaintiff.

In view of the above facts and circumstances of the case, I do not find any reason to interfere in the impugned order. Thus, this writ application is dismissed.

However, the finding recorded by the Court below or by this Court will not prejudice either party at the time of hearing of the suit finally.

Saurabh/-

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(Mungeshwar Sahoo, J)