

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1594 of 2016**

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Suchitra Kumari & Anr

.... Petitioner/s

Versus

Smt. Lalithambal & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar

For the Respondent/s : Mr. Kaushlendra Kumar Sinha

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

2 23-12-2016 The learned senior counsel, Mr. J.S.Arora appearing for the petitioners submitted that the Title Suit No.92 of 2016 has been filed by the petitioners praying for declaration of title and for challenging the deed of gift as illegal. The learned senior counsel further submitted that in the said suit prayer for injunction has been made against the defendant Nos.1 to 3 and also defendant Nos.4 to 8 restraining them from making payment to the defendant Nos.1 to 3. However, the court below by the impugned order dated 19.11.2016 deleted the names of defendant Nos.4 to 8 without there being any application either filed by the plaintiff or by defendant Nos.1 to 3 or by defendant Nos.4 to 8. Further the court below held that whether they are necessary party or not shall be considered at the time of judgment of the suit without looking into the relief prayed for by the plaintiff-petitioner.

It appears that copy of the present civil miscellaneous



application has been served on the learned counsels appearing on behalf of the respondent Nos.4 to 8 and the names of the learned counsels, appearing on their behalf, are also printed in the daily cause list but nobody appeared. So far other respondents are concerned, they are not required to be heard in this matter.

Perused the impugned order dated 19.11.2016 passed by Sub Judge I, Patna in Title Suit No.92 of 2016. It appears that plaintiff never filed any application for deleting the names of defendant Nos.4 to 8. The defendant Nos.4 to 8 never filed application that they are not necessary party, therefore, their names be deleted. On the contrary, from perusal of the plaint, which is Annexure 1 to this civil miscellaneous application, it appears that a specific relief for injunction has been prayed for by the plaintiff wherein the plaintiff has prayed for restraining the defendants Nos.1 to 8 from disbursing the amount lying in the office of the respondent Nos.4 to 8 and for restraining the defendant Nos.1 to 3 from withdrawing the said amount. So far this relief is concerned, it is directly against the defendant Nos.4 to 8. In absence of the said defendants, the prayer for injunction prayed for by the plaintiff restraining the authorities i.e. defendant Nos.4 to 8 cannot be granted. A separate injunction application has also been filed by the plaintiff-petitioner which is Annexure 2



wherein interim injunction has also been prayed for against the defendant Nos.4 to 8 also.

From perusal of the impugned order, it appears that these aspects of the matter were not at all considered by the Court below. Therefore, in my opinion, the court below has passed the order in the manner not permitted by law. If now at this stage their names are struck down, then there is no question of deciding regarding joinder or mis-joinder at the stage of final hearing arises. The court can strike down the name of a party only after recording a finding that the said person is not a necessary party in the suit. In the present case, the defendants have been added as party as there is specific relief claimed against them. The relief of injunction has been separately valued and court fee has also been paid separately by relief of injunction.

In view of the above facts and circumstances of the case, the order passed by the court below is unsustainable in the eye of law. Thus, this civil miscellaneous application is allowed. The impugned order dated 19.11.2016 passed by Sub Judge I, Patna is set aside.

(Mungeshwar Sahoo, J)

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