

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4841 of 2016

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1. Madhusudan Prasad Son of late Laxmi Lal@Laxmi Prasad Resident of Village Maruaha Po Banhawra, Barar, Ps Nautan District Bettiah West Champaran. At Present Ujjain tola (Coiri Tola) Adarsh Colony Bettiah , Po and PS Bettiah town, District West Champaran.

.... Petitioner/s

Versus

1. Raju Kumar Shrivastava Son of late Dasyashankar Prasad Resident of Village Maruahan Po Banhaura, PS Nautan District West Champaran., At Present residing at Seema Sadan, Balbagh, Bettiah PS Bettiah Muffasil Po Bettiah District West Champaran.

2. Nageshwar Thakur son of late Nathu Thakur Resident of Village Marudhan, Po banhaura, PS Nautan District West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Keshav Srivastava, Sr. Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

2 12-04-2016 Heard Mr. Keshav Srivastava, learned Senior Counsel
for the petitioner.

This application under Article 227 of the Constitution of India has been filed by the intervener- petitioner against the order dated 04.02.2016 passed by Sub Judge III, Bettiah, West Champaran, in T.S.No. 03 of 2015 whereby the intervention application filed by the petitioner has been rejected.

It appears that the plaintiff- respondent filed the aforesaid Suit against the defendant- respondent for declaration that the sale deed executed by the plaintiff on 22.08.2014 is a

null and void document and is without consideration. In the Suit, the intervener filed an application for adding him as party on the ground that he has filed an application under Section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961.

By the impugned order the court below has rejected the application.

Learned counsel has relied upon a Division Bench decision of this Court in the case of Gunjan Yadav & anr –v- Sitaram Choudhary & ors., BBCJ (1) 260-IV, and submitted that the plaintiff and the defendant have filed collusive Suit and if he will not be added as party to the Suit, he may not raise this question.

Perused the order passed by the court below.

Also prused para 7 of the decision relied upon by the learned Senior Counsel. It may be mentioned that the Division Bench of this Court while deciding a writ application arising out of the land ceiling matter, it has been held that Section 43 bars the jurisdiction of the civil court to settle, decide or deal with any question which is, by or under the Act, required to be settled, decided or dealt with by the Board of Revenue, the Commissioner, the appellate authority or the Collector. If it were



to be held that the question cannot be raised or decided by the revenue court in a proceeding under Section 16(3) of the Act, it will lead to anomalous results and multiplicity of litigation. In a civil court it would be open to the transferor to raise the same question because in that event Section 43 will not be a bar. Now, therefore, in view of the settled proposition laid down by this Court consequently court can decide this question effectively and if consequently decided this matter in favour of the transferor, the entire proceeding under Section 16(3) and all orders passed therein will be set at naught. Therefore, in the present case the interest of the petitioner is dependent on the result of the present Title Suit filed by the transferor. The Hon'ble Supreme Court in the case of Mumbai International Airport (P) Ltd. –v- Regency Convention Centre & Hotels (P) Ltd., (2010)7 SCC 417, has held that the fact that a person is likely to secure a right/ interest in a Suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or proper party to the suit.

In the present case, the learned court below on the basis of various decisions held that the petitioner is not a necessary party. The issue to be decided is as to whether consideration passed or not or whether sale deed is null and void and for this decision the presence of the petitioner, who is

intervening, is not at all necessary.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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