

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6625 of 2015**

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1. Farhat Bano, Wife of Md. Asgar Ali, resident of mohalla Khalse Madhupur, P.O. & P.S. Mahupur, Distt. Deoghar (Jharkhand) presently residing at Mohalla Kath Ka Pul, Near Mogalpur Police Chowki, P.S. Khajekalan, Patna City, Distt. Patna.

2. Nazarana Khatoon, W/o Md. Safi Alam, resident of mohalla Mogalpur, Chhoti Bazar, Jama Majid, P.S. Khajekalan, Patna City, Distt. Patna.

.... .... Petitioners

Versus

1. Md. Sultan Ahmad, son of md. Alauddin, result of Mohalla Mogalpur Durukhi, P.S. Khajekalan, Patna City, Distt. Patna.

2. Malik Mohammad Alam Mallik, son of Sahid Hussain, @ Abdul Gafur, resident of Mohalla Mogalpur Durukhi P.S. Khajekalan, Patna City, Distt. Patna.

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Manoj Kumar Singh

For the Respondent/s : Mr.

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

5      25-04-2016                      Heard learned counsel, Mr. Manoj Kumar Singh, for the petitioners and the learned counsel, Mr. Arshad Alam, for the respondents.

The learned Sub-Judge-1, Patna City by order dated 07.02.2015 rejected the intervention application filed by the petitioner in Title Suit No. 228 of 2013.

It appears that this Suit was filed by the plaintiff-respondent for specific performance of contract between the plaintiff and the defendant. The petitioner filed application for the purpose to be added as party under Order 1 Rule 10(2) of the

Code of Civil Procedure on the ground that he has purchased the entire Suit property by registered sale deed dated 30.07.2013. By the impugned order, the Court below has rejected the said application.

The learned counsel for the petitioners relied upon decision of the Supreme Court in the case of **A. Nawab John and others Vs. V. N. Subramaniam, (2012) 7 SCC 738**. The learned counsel on the basis of this decision submitted that in a suit for specific performance also the purchaser should be added as party.

On the contrary, the learned counsel for the respondents relied upon the decisions of the Supreme Court in the case of **Sanjay Verma Vs. Manik Roy, AIR 2007 SC 1332, Kasturi Vs. Iyyamperumal, AIR 2005 SC 2813** and submitted that the plaintiff cannot be forced to fight with a person against whom the plaintiff is not claiming any relief and in a Suit for specific performance, a third party cannot be added as a party.

It may be mentioned here that the Hon'ble Supreme Court in the case of **Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Others, (2010) 7 SCC 417** has considered the case, and in the case of **Kasturi Vs. Iyyamperumal (2005) 6**



SCC 733 equal to **Kasturi Vs. Iyyamperumal, AIR 2005 SC 2813** and has held that in our opinion the aforesaid decision can only be understood to mean that a third party cannot be added in a Suit for specific performance if he has no semblance of title in the property in dispute obviously a busy body or *inter loper* with no semblance of title cannot be impleaded in such a suit that would unnecessarily protract or obstruct the proceeding in the Suit. However, the aforesaid decision will have no application whether a third party shows some semblance of title or interest in the property in dispute. It cannot be laid down as an absolute proposition that whenever a Suit for specific performance is filed by (A) against (B), a third party (C) can never be impleaded in Suit, if (C) can show a fair semblance of title or interest he can certainly file an application for impleadment. The Hon'ble Supreme Court in the case of **A. Nawab John and others Vs. V. N. Subramaniam, (2012) 7 SCC 738** at paragraph 22 relying on the earlier decisions of the Supreme Court **Amit Kumar Shaw Vs. Farida Khatoon, AIR 2005 SC 2209** has held that at Para 21 the transferee is not entitled as a right to be made a party in the Suit, though the Court has a discretion to make him a party. But the transferee *pendente lite* can be added as a proper party if his interest in the subject matter of the Suit is substantial and not



just peripheral. 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 22 Rule 10 and latter pendente lite may be joined as party. At paragraph 22, the Hon'ble Supreme Court held that the opinion of this Court is that the pendente lite purchaser's application for impleadment should normally be allowed or considered liberally.

So far the decision relied upon by the learned counsel for the respondents in the case of **Sanjay Verma Vs. Manik Roy, AIR 2007 SC 1332** is concerned, it may be mentioned here in that case, an injunction order was passed by the Trial Court and during the subsistence of the said injunction order, the defendant sold the property.

In view of that decision the Hon'ble Supreme Court held that since the purchase was made without obtaining leave of the Court, the purchase can be ignored and in such circumstances, an application for impleadment was held not Bonafide. Further, it may be mentioned here that all these

decisions have been taken into account by the Supreme Court in the case of **Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Others, (2010) 7 SCC 417** and **A. Nawab John and others Vs. V. N. Subramaniam, (2012) 7 SCC 738** and therefore, the subsequent decisions are to be followed.

Therefore, in my opinion, the learned Court below has acted in the manner not permitted by law and if the order is allowed, it will not only occasion failure of justice but shall affect the right and interest of the petitioner causing great hardship to him and lead to multiplicity of the proceedings. Thus, this writ application is allowed and the impugned order is set aside. Application filed by the petitioner to be added as party in the Suit is allowed.

**(Mungeshwar Sahoo, J)**

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