

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.109 of 2016**

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Shivendra Kumar

.... Appellant/s

Versus

Ram Shankar Prasad Singh

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

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03-08-2016

Heard learned counsel, Mr. S.K. Thakur, appearing

for the petitioner and learned counsel, Mr. Sanjiv Shankar
appearing on behalf of respondent No.1

2. This application has been filed by the petitioner for
setting aside the order dated 16.01.2016 passed by the Sub-Judge-
Ist, Muzzafarpur, in Miscellaneous Case No. 12 of 2013, whereby
the learned court below rejected the application filed by the
petitioner for being added as party in Miscellaneous Case No. 12
of 2013.

3. It appears that respondent No.1 filed suit for specific
performance of contract being T.S. No. 39 of 2012. The said suit
for specific performance was decreed *ex-parte*. Thereafter
defendant No.2 filed application under Order 9 Rule 13 C.P.C.
praying for setting aside the *ex-parte* decree on the ground that no
notice was served on him. During the pendency of the
miscellaneous Case, the present petitioner purchased the entire

property by the registered sale deed dated 12.08.2013, which is the subject matter of the agreement for sale between the plaintiff and the defendant. Thereafter, he filed application for being added as party in the miscellaneous case on the ground that now the petitioner has stepped into the shoes of the petitioner of Miscellaneous Case No. 12 of 2013.

4. Learned counsel for the petitioner submitted that since the entire property has been transferred by the defendant, who is the petitioner of Miscellaneous Case No. 12 of 2013, in favour of the present petitioner, now, he will not take interest in prosecuting the miscellaneous case. Therefore, to protect the interest, the petitioner should be added in the proceeding but the court below rejected the same without considering the settled principle of law.

5. On the other hand, learned counsel for the respondent No.1 submitted that the petitioner is stranger to the agreement. Therefore, he is not a necessary party at all in the suit for specific performance of contract. The learned court below has, therefore, rightly rejected the application. Learned counsel for respondent has relied upon the decisions of the Supreme Court reported in **1995 (3) SCC 147** and **2005 (6) SCC 733** and also the decision of this Court reported in **2014 (3) PLJR 300**.

6. It may be mentioned here that all these previous decisions of the Supreme Court have been considered,



subsequently, by the Supreme Court in the case of ***Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors.*** reported in **2010 (7) SCC 417** and it has been held at paragraph No. 19 as follows; “Referring to suits for specific performance, this Court in the case of ***Kasturi*** held that following persons are to be considered as necessary parties; (i) the parties to the contract, which is sought to be enforced or their legal representatives (ii) a transferee of the property, which is the subject matter of the contract. It appears that in the aforesaid case before the Supreme Court, it was argued that ***Kasturi*** case and the case of ***Sumtibai & Ors Vs. Paras Finance Co.*** reported in **2007 (10) SCC 82** are contrary to each other. The Hon’ble Supreme Court at paragraph 26 held that;

*“If the principles relating to impleadment, are kept in view, then the purported divergence in the two decisions will be found to be non-existent. The observations in ***Kasturi*** and ***Sumtibai*** are with reference to the facts and circumstances of the respective cases. In ***Kasturi***, this Court held that in suits for specific performance, only the parties to the contract or any legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties. In ***Sumtibai***, this Court held that a person having semblance of a title can be considered as a proper party. ***Sumtibai*** did not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor did ***Kasturi*** lay down that no one, other than the parties to the contract and their legal representatives/transferees, can be impleaded even as a proper party.”*

7. The Hon’ble Supreme Court in the case of ***Amit***



Kumar Shaw and another vs. Farida Khatoon and another reported in ***AIR 2005 (5) SC 2209*** has held that a transferee *pendente lite* to the extent he has acquired interest from the defendant is vitally interested in the litigation whether the tribunal is of the has held that 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 XXII Rule 10 an alienee *pendente lite* may be joined as party, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests.

8. The Hon'ble Supreme Court again in ***2012 (7) SCC 738*** relied on the decision of the Supreme Court in the case of ***Amit Kumar Shaw and another (supra)*** has held that the transferee is not entitle as of right to be made a party in the suit, though the Court has discretion to make him a party. The transferee *pendente lite* can be added as proper party if his interest in the said matter of the suit is substantial and not just peripheral. At paragraph 22, the Hon'ble Supreme Court held that the *pendente lite* purchaser's application for impleadment should

normally allowed or considered liberally.

9. In view of the above subsequent decisions of the Supreme Court and in view of the admitted fact that the petitioner is purchaser during the pendency of the miscellaneous case, the court below should have allowed the application for being added as party in the miscellaneous case to protect his interest. Therefore, the learned court below has not exercised the jurisdiction vested in it by law and if the order is allowed to stand, it will occasion failure of justice and the petitioner shall be greatly prejudiced. Thus, this civil miscellaneous application is allowed. The impugned order is set aside. The application filed by the petitioner is, hereby, allowed and he is added as party in the miscellaneous case.

(Mungeshwar Sahoo, J)

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