

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15051 of 2014

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1. Shama Parveen wife of Md. Hashib Khan daughter of Shafi Alam resident of Sitanabad Lalu Tola, P.O. and P.S. Sitanabad, District- Saharsa
 2. Nasrin Wife of Md. Ibrar Resident of Sitanabad, P.O. and P.S. Sitanabad, District- Saharsa Both Present residing of Mohalla- Purab Sarai, Police Station- Kotwali, P.O. and District- Munger

.... Petitioner/s

Versus

1. Md. Zahir Khan Son of Late Hazi Md. Altaf Khan Resident of Mohalla- Gulzar Pokhar, Police Station- Kotwali, P.O. and District- Munger
2. Md. Irshad Alam @ Md. Sahzad Son of Md. Safi Alam
3. Bibi Nazra Khatoon Wife of Md. Irshad Alam @ Md. Sahzad Both resident of Gulzar Pokhar, Police Station- Kotwali, District- Munger

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binay Kumar, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 24-10-2016

Heard learned counsel for the petitioners.

By the impugned order, the learned court below has rejected the prayer on behalf of the petitioners for their impleadment as parties in the suit for specific performance of contract filed by the plaintiff-respondent against the defendant-respondents.

The suit for specific performance of contract has been filed by the plaintiff-respondent on the basis of agreement for sale for the suit land said to have been executed by the defendant-respondents. The petitioners filed the petition for their impleadment in the suit as



parties claiming their title over the suit land. The learned court below has come to the finding that the petitioners are stranger to the agreement for sale and, therefore, they were neither necessary party nor proper party in the suit.

Learned counsel for the petitioners has submitted that as the suit for partition is pending at the instance of the petitioners, there is apprehension that the interest of the petitioners in the suit property would be prejudiced by any decree which may be passed in the suit for specific performance of contract.

After considering the submissions and materials on record, it is evident that the suit has been filed for specific performance of contract by the plaintiff-respondent against the defendant-respondent. There is no dispute that the present petitioners are not parties to the agreement for sale which is the basis for the relief in the said suit. A person who claims independent title over the suit property cannot be impleaded in a suit for specific performance of contract as he is alien to the issues arising for determination in the suit for specific performance of contract. The law in this regard is well settled by the Apex Court in the case of **Kasturi Vs. Iyyamperumal 2005 (6) SCC 733** where their lordships have laid down that a stranger to the agreement for sale cannot be impleaded as a party in the suit for specific performance of contract. This Court, therefore, is not inclined to



invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The application is accordingly, dismissed.

However, this order shall not prejudice the remedy of the petitioners which may be available to them in accordance with law.

(V. Nath, J)

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