

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13484 of 2015

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Surendra Singh & Ors

.... Petitioner/s

Versus

Jitendra Kumar Bothra

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Prasad Ambastha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 28-06-2016 Heard learned counsel for the petitioners and the learned counsel for the respondents.

2. The present petitioners filed Title Suit No. 52 of 2014/C.I.S. No. 5 of 2015 against the defendants. Defendant No.1, Jitendra Kumar Bothra filed application for rejecting the plaint as he is not necessary party alleging that in T.S. No. 15 of 1999, separate *Takhta* has been allotted in his favour. At the time of hearing of the said application, defendant No. 1 prayed that his name may be deleted. The court below rejected the application under Order 7 Rule 11 C.P.C. but by the impugned order has deleted the name of defendant No.1.

3. It may be mentioned here that in earlier T.S. No. 15 of 1999, the plaintiff of the present suit was not a party. He had filed intervention application but it was rejected by the trial court. From perusal of the application filed by the defendant No.1 under

Order 7 Rule 11 C.P.C, it appears that the defendant No. 1 admitted that he along with Vishwajit Saha has purchased by registered sale deed jointly from Dipen Kumar Modi. According to the plaintiff, there has been no partition between both the parties i.e. plaintiff and defendant No.1.

4. From perusal of the impugned order, it appears that the lower court deleted the name of defendant No. 1 considering the facts of the earlier suit although it is admitted fact that some of the properties in suit were purchased jointly by the plaintiff, Jitendra Kumar Bothra. The petitioners are purchasers from the heirs of Vishwajit Saha and admittedly there has been no partition between the parties. So far the earlier suit of the year 1999 is concerned, admittedly, the present plaintiffs were not party. Therefore, the court below has wrongly deleted the name of defendant No.1. Since the suit has been filed against him, he is necessary party as the relief is claimed against him and some properties are joint between the co-purchasers. Thus, the impugned order, whereby the name of the defendant No. 1 has been deleted is set aside and the defendant No. 1 shall continue as defendant No. 1. Accordingly, this writ application is allowed.

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(Mungeshwar Sahoo, J)