

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13893 of 2015

=====

Jokhan Yadav & Ors

.... Petitioner/s

Versus

Chhedi Yadav & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shiv Kumar Dwivedy

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 13-05-2016

Heard learned counsel Mr. Shiv Kumar Dwivedy for
the petitioners.

By the order dated 01.12.2014 the learned Munsif,
Bettiah, West Champaran rejected the intervention application
filed by the petitioners under Order 1 Rule 10 of the Code of Civil
Procedure.

It appears that the plaintiff-respondent filed the
aforesaid suit praying for declaration that the order of the
Executive Magistrate in 145 Cr.P.C. proceeding is not binding on
the plaintiff and further for restoring back schedule-3 land to the
plaintiff.

Admittedly petitioners-interveners are not party in 145
Cr.P.C. proceeding. They filed the application under Order 1 Rule
10 of the Code of Civil Procedure for being added as party on the
ground that they are also the heirs of Hanshraj. The plaintiff

objected the prayer for being addition on the ground that they are not the heirs of Hanshraj. The parties produced documentary evidences and thereafter the court below recorded finding that the case of the plaintiff appears to be plausible and accordingly rejected the intervention application.

The plaintiff has prayed for declaration that 145 Cr.P.C. proceeding is not binding on him and also for recovery of possession. In this suit, therefore, the question as to whether the petitioners are the heirs of Hanshraj or not is entirely a foreign question. In the suit the only question to be decided is whether the finding of the Executive Magistrate in 145 Cr.P.C. proceeding is binding on the plaintiff or not and whether the plaintiff is entitled for restoration of the property or not. If at all the petitioners are the heirs of Hanshraj and have got any share in the property, they are at liberty to file appropriate suit before appropriate forum but their presence in the present suit is not at all necessary. Therefore, in supervisory jurisdiction this Court cannot substitute its own finding regarding parentage of the petitioners when it is disputed by the plaintiff and admittedly the petitioners were not party in 145 Cr.P.C. proceeding.

Thus, this writ application is dismissed.

Harish/-

U			
---	--	--	--

(Mungeshwar Sahoo, J)