

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4569 of 2014

=====

1. Shambhu Dayal Singh Son Of Late Sakal Deep Singh Resident Of
Village - Gorainpur, P.O. Gorainpur, P.S. Awatar Nagar, District - Saran (Chapra)

.... Petitioner/s

Versus

1. Arun Kumar Singh Son Of Late Kanchan Singh Resident Of Village -
Gorainpur, P.O. Gorainpur, P.S. Awatar Nagar, District - Saran (Chapra)

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ram Kishore Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 21-01-2016

Heard learned counsel for the petitioner.

By the impugned order dated 11/13.01.2014 passed by the learned Sub-ordinate Judge-VIII, Saran at Chapra in Miscellaneous Case No. 31 of 2008, the application filed by the present petitioner for rejection of the Miscellaneous Case No. 31 of 2008 has been rejected.

It appears that the petitioner filed partition suit. The suit was decreed. Thereafter, the petitioner filed execution case. During the pendency of the execution case, Arun Kumar Singh filed an application for being added as party in the suit, which was rejected. In the execution case, Arun Kumar Singh filed and application under Order 21 Rule 97 read with 101 C.P.C., which

was registered as Miscellaneous Case No. 31 of 2008. In the miscellaneous case, the present petitioner filed an application for rejection of the said miscellaneous case on the ground that the said miscellaneous case is not maintainable on various grounds raised in the application.

The learned court below held that all these points, which are being raised by the petitioner, can only be decided after evidence and further held that in view of the decision of the Supreme Court in the case of *Tanzeem-e-Sufia Vs. Bibi Haliman and Others* reported in *AIR 2002 SC 3083* and in the case of *N.S.S. Narayan Sarma and others Vs. M/s. Goldstone Exports (P) Ltd. and others.* reported in *AIR 2002 SC 251* held that the miscellaneous case is maintainable and that cannot be rejected as not maintainable.

The learned counsel for the petitioner submitted that for the same relief, the respondent, Arun Kumar Singh has already filed title suit being T.S. No. 25 of 2008 and his application was rejected for being added as party, therefore, the miscellaneous case was not maintainable.

Perused the decisions of the Hon'ble Supreme Court. The Supreme Court in the case of *Tanzeem-e-Sufia Vs. Bibi Haliman and Others* reported in *AIR 2002 SC 3083* has clearly

held that on the ground that the suit is pending, the application filed by a third party under Order 21 Rule 97 read with 101 C.P.C. cannot be rejected. The court below has rightly rejected the application and held that the miscellaneous case is maintainable particularly when Arun Kumar Singh is a third party to the suit. Accordingly, this writ application being devoid of any merit is dismissed.

(Mungeshwar Sahoo, J)

brajesh/-

U			
---	--	--	--