

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2349 of 2014

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Syed Arif Quli

.... Petitioner/s

Versus

Miss. Marriam Fatma @ Miss. Fatma Arif & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.M. Shabbir Alam

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

5 06-01-2016 **1.** Heard the learned counsel, Mr. S. M. Shabbir Alam, for the petitioner and the learned counsel, Mr. Doodhnath Singh, for the defendant respondent.

2. The plaintiff has challenged the order dated 27.11.2013 passed by the learned Munsif-1st, Patna in Title Suit No.10 of 2007 by which the petition filed by the plaintiff petitioner under Order 1 Rule 10 CPC for adding Executive Officer, Municipal Corporation as party has been rejected.

3. It appears that the plaintiff petitioner filed the suit for declaration of title and restraining the defendants from using the passage. The defendant filed written statement contending that in fact the passage is public passage.

4. Thereafter, the petitioner filed application for addition of Municipal Corporation in view of the defence taken by the defendant. The Court below rejected the said application on the ground that the

Municipal Corporation is not disturbing the plaintiff, therefore, Municipal Corporation is not a necessary party.

5. The Hon'ble Supreme Court has held that **'if an application is made by a plaintiff for implead some one as proper party subject to limitation bona fides etc., the Court will normally implead him if he is found to be a proper party.'** In the present case admittedly, in the written statement at paragraph 15 and 16, the defendants are raising the question that it is the public land and in view of this defence, the application has been filed for adding the Municipal Corporation as party. The plaintiff is the dominus litis and, therefore, the defendant has nothing to say as to against whom the plaintiff will fight the case.

6. In view of the settled proposition of law, in my opinion, the Court below has acted in the manner not permitted by law. Thus, this writ application is allowed and the impugned order is set aside. The application filed by petitioner for adding party is hereby allowed.

7. The interim application, if any pending in this writ application, thus stands disposed of.

Sanjeev/-

(Mungeshwar Sahoo, J)

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