

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15735 of 2015

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Nagendra Singh & Anr

.... Petitioner/s

Versus

Aklu Mahto & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar Singh, Adv.

: Mr. Prativa Kumari, Adv.

For the Respondent/s : Mr. Nitayanand Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 04-10-2016

This application, under Article 227 of the Constitution of India, has been filed by the petitioners against the order dated 13.08.2015 passed by the A.D.J.-V, Samastipur in T.A. No. 95 of 2010, whereby the court below allowed the intervention application filed by the plaintiffs-respondents under Order 1 Rule 10 C.P.C. before the lower appellate court for adding Bhudan Yagya Committee as party in the title appeal.

2. Learned counsel for the petitioners submitted that the plaintiffs-respondents filed the suit for declaration of title on the basis of Bhudan Yagya Committee certificate issued in favour of the father of the plaintiffs. The plaintiffs further prayed that the sale deeds executed by the vendor of the present petitioners are illegal, null and void sale deeds. The defendants-petitioners contested the suit and the suit was dismissed by the trial court against the said decree. Against the said decree dismissing the



plaintiffs' suit, the plaintiffs have filed the appeal. The suit has not been dismissed as bad for non-joinder of necessary party. Before the appellate court if the Bhudan Yagya Committee is added as party then there is no pleading on behalf of Bhudan Yagya Committee nor there is any evidence adduced by Bhudan Yagya Committee. Therefore, for deciding the question as to whether the sale deeds in favour of the petitioners is valid, legal, null and void, presence of Bhudan Yagya Committee is not at all necessary as the said committee is not claiming interest in the property in suit rather the plaintiffs have filed the suit for declaration of title. On these grounds, learned counsel for the petitioners submitted that the order be set aside.

3. On the other hand, learned counsel for the plaintiffs-respondents submitted that Bhudan Yagya Committee had in fact issued the certificate on 20.04.19789 and on the basis of the said certificate, the plaintiffs came in possession of the property. Subsequently, the property has been sold by the vendor of the present petitioners in favour of the petitioners in the year 2002. Therefore, the plaintiffs had no option but to file the suit for declaring the sale deeds as null and void sale deeds. Since in the year 1978 itself, the property in suit had been given to the plaintiffs, the plaintiffs had got title in the suit property. Therefore, to establish their title on the basis of the certificate issued by the

Bhudan Yagya Committee, application under Order 1 Rule 10 C.P.C. was filed before the lower appellate court and the lower appellate court, considering the facts of the case, has allowed the application.

4. The judgment of the trial court has been annexed as Annexure-5 to this writ application. From perusal of the judgment passed by the trial court, it appears that nowhere trial court recorded any finding that the presence of Bhudan Yagya Committee is necessary for determination of the questions involved in the suit i.e. one set up by the plaintiffs and the other which is pleaded by the defendants. The plaintiffs are challenging the two registered sale deeds in favour of the petitioner in this writ application. Therefore, question to be decided and has been decided is regarding the legality or otherwise of the sale deeds, which are in favour of the present petitioners. The plaintiffs are claiming that they have got the title because the property had been gifted by Bhudan Yagya Committee in their favour in the year 1978. Since the plaintiffs are claiming their title on the basis of the gift deed said to have been executed by Bhudan Yagya Committee, it is for the plaintiffs to prove the same. For deciding this question, presence of Bhudan Yagya Committee is not at all necessary. Bhudan Yagya Committee is not claiming title, interest in the suit property at present. Here the plaintiffs have filed the

suit. At best he will be supporting the plaintiffs.

5. The Hon'ble Supreme Court in the decision reported in **2010 (7) SCC 417** has held that a necessary party is a person who ought to have been joined as party and in whose absence no effective decree would be passed at all by the Court. Therefore, in view of this decision of the Supreme Court, in no case, it can be said that no effective decree could be passed by the court or by the trial court in absence of so called necessary party, the Bhudan Yagya Committee. So far proper party is concerned, the Supreme Court in the said decision also held that a proper party is a party who though is not a necessary party, is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters for the decision in the suit. In the present suit, as stated above, the question to be decided is whether the plaintiffs have got title on the suit property because of the gift executed by Bhudan Yagya Committee. This question was contested by the parties in the trial court and then the trial court has dismissed the suit. Now, if the Committee is added as party before the appellate court then it will not make any difference because there is neither pleading on behalf of the Bhudan Yagya Committee nor there is any evidence. The court below has also not dismissed the suit because of non-joinder of necessary party.

6. From perusal of the impugned order, it appears that

these aspects of the matter have not been considered by the appellate court and only held that Bhudan Yagya Committee is a necessary party. In my opinion, therefore, the order passed by the court below is not according to law and thus, it is unsustainable.

7. In the result, this writ application is allowed. The impugned order is set aside. The application filed by the plaintiffs-respondents, who are appellants before the lower appellate court, is, hereby, rejected.

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(Mungeshwar Sahoo, J)