

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4886 of 2015

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1. Mumtaz Ali.
2. Shamim Ansari.
3. Naseem Ansari. All are Sons of Late Ramjan Ali. All are residents of village - Neel Kothi, P.S.- Dehri-On-Sone, District - Rohtas.

.... Petitioner/s

Versus

1. Rajendra Prasad. Son of Shital Prasad.
2. Shital Prasad. Son of Ram Briksha Prasad.
3. Smt. Sandhya Devi. Wife of Rajendra Prasad.
4. Smt. Kaushalya Devi. Wife of Shital Prasad. All are residents of Mohalla - Purana G.T. Road, Ward No. 14, Dehri, P.S.- Dehri-On-Sone, District - Rohtas.
5. Uday Kumar. Son of Yugal Kishor. Resident of village - Sadar Chouk, Old G.T. Road, Dehri, P.S.- Dehri-On-Sone, District - Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 15-03-2016 Heard Mr. Jitendra Prasad Singh, learned counsel appearing for the petitioners.

2. The grievance of the petitioners is that the purchaser should not have added/substituted in place of the original respondent in title appeal.

3. Admittedly, the intervenor, who filed the application under Order 1 Rule 10 C.P.C., has already purchased the entire suit premises during the pendency of the appeal. It is well settled principle of law that the appeal is a continuation of the suit. The

Hon'ble Supreme Court in the case of *Amit Kumar Shaw and another vs. Farida Khatoon and another* reported in *AIR 2005 SCC 2209* has held that a transferee *pendente lite* to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant, the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a *lis pendens* transferee a party, under Order XXII Rule 10 an alienee *pendente lite* may be joined as party, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests.

4. In view of the above settled principle of law when the court below has rightly exercised judicial discretion, I find no case for interference in supervisory jurisdiction under Article 227 of the Constitution of India. Thus, this writ application is dismissed.

5. However, the court below has used the word "substitution", therefore, it is made clear that the purchaser may be added as party respondent.

(Mungeshwar Sahoo, J)

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