

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7811 of 2012

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Rajni Devi wife of Sri Ranjit Rajhans, R/O Mohalla-Tulsi Misra Lane,
 Champanagar, PO.Champanagar, PS-Nathnagar, Distt-Bhagalpur.
 (intervener)

.... Petitioner/s

Versus

1. Shailesh Rajhans son of late Shyam Rajhans, resident of Mohalla- Tulsi Misra Lane, Champanagar, PO.Champanagar, PS-Nathnagar, Distt-Bhagalpur. (Plaintiff).
2. Gobardhan Mohan Jha, son of late Mahendra Mohan Jha, R/O Mohalla, Tulsi Misra Lane, Champanagar, PO.Champanagar, PS-Nathnagar, Distt-Bhagalpur.(Defendant)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Diwakar Upadhyaya

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 11-02-2016

Heard learned counsel for the petitioner.

2. Petitioner has assailed order dated 27.01.2010 passed by Sub-Judge- 7th Bhagalpur in Title Suit No. 164/2005 whereby and whereunder prayer made on behalf of petitioner under Order-I Rule 10 CPC read with Section 151 of the CPC has been rejected.

3. Admittedly, the instant suit happens to be under the banner of Specific Performance of Contract Act on account of denial at the end of defendant to execute sale deed in terms of “Zabrebeyana” which he had executed after receiving earnest money appertaining to Rs. 44,000/- out of 90,000/- the agreed consideration amount.

4. The suit was filed in the year 2005. During subsequent event, in the year 2006 the defendant had executed power of attorney in favour of Ranjit Rajhans (18.04.2006) who had executed sale deed in favour of petitioner, his wife. Because of the fact that the instant suit happens to be under the Specific Performance of Contract Act and further, there happens to be no negotiation with the petitioner, therefore, presence of petitioner is not at all necessary as petitioner cannot be compelled to perform the terms of agreement so agreed amongst the plaintiff as well as defendant.

5. Consequent thereupon, presence of petitioner is not at all necessary in the proceeding and that being so, the learned lower court had rightly refused the petitioner to be impleaded as a party.

6. Petition is rejected.

(Aditya Kumar Trivedi, J)

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