

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1024 of 2016**

=====

Gulam Samdani, Son of Md. Gulam Rasul, Resident of Village - Bara,
P.S. Chandauti, District - Gaya

.... Appellant

Versus

1. Rokhsana Khatoon W/o Ghulam Subhani and d/o Lage Md. Alauddin
R/o village - Paraiya, P.O. + P.S. Belaganj, District - Gaya
2. Shahina Bano W/o Qutubuddin and D/o Late Md. Alauddin R/o village
- Dabbo, P.O. Bara, P.S. Chandauti, District - Gaya
3. Wasima Khatoon D/o Late Md. Alluddin R/o village - Bara, P.S.
Chandauti, District - Gaya
4. Md. Farooque
5. Md. Iftexhar Ahmad @ Atique both sons of Late Md. Alauddin Both
Resident of village + P.O. Bara, P.S. Chandauti, District Gaya
6. Shamima Khatoon Wife of Shahabuddin and D/o Late Md. Alauddin
Resident of village - Dabbo, P.O. Bara, P.S. Chandauti, District - Gaya
7. Lal Mohan Yadav
8. Surendra Yadav
9. Gauri Yadav all sons of Darshani Mahto all are Resident of village -
Gangapur, P.O. Chakand Station, P.S. Chandauti, District - Gaya
10. Md. Shakeelur Rahman Son of Dolman Sohab R/o Mohalla -
Durgabari, P.S. Civil Lines, District - Gaya
11. Md. Abdul Hussain Son of Late Tabarak Hussain
12. Bano Khatoon W/o Gayasuddin
13. Zamiruddin S/o Md. Rafiquddin
14. Md. Sabir S/o Late Manzoor Mian
15. Md. Sultan S/o Late Reyazuddin all are Resident of village - P.O. Bara,
P.S. Chandauti, District - Gaya
16. Md. Akhtar Hussain S/o Abdul Rashid @ Kallu Resident of village -
Gewal Bigha, P.S. Rampur, District - Gaya

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Sanjeev Kumar
For the Respondents : Mr. Jitendra Kishore Verma,

=====

**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

3 17-11-2016 Heard Mr. Sanjeev Kumar, learned counsel for the

petitioner and Mr Jitendra Kishore Verma appearing on behalf of

the respondents.

Perused the impugned order dated 30.07.2016 passed by the learned Sub-Judge XI, Gaya in Partition Suit No. 26 of 2015, whereby the learned court below rejected the application filed by the petitioner under Order 1 Rule 10(2) of the C.P.C. for being added as a defendant in the partition suit.

From perusal of the impugned order, it appears that petitioner had purchased the property from a transferee from the defendant no. 2 and then he filed an application for being added as a party.

Learned counsel for the petitioner submitted that if he will not be made party in the suit, his interest will not be protected.

On the other hand, learned counsel for the respondent submitted that evidence of both the parties had already been closed. Thereafter, the defendant no. 12 filed an application for recalling of the order closing the evidence and the court below recalled the same. Thereafter, the defendant no. 12 recalled the witnesses of the plaintiff and cross-examined. Thereafter, the evidence is going on, but evidence of other defendant nos. 1 to 3 have already been closed and the petitioner is deriving his title to the property which was purchased from a transferee from the defendant no. 2.

According to the learned counsel for the respondent, if

the petitioner will be allowed to file written statement and adduce evidence at this stage, it will lead to multiplicity of proceeding which will occasion failure of justice and therefore, if the petitioner is added as a party, he should not be allowed to file written statement and to lead evidence.

It is admitted fact that evidence of the defendant nos. 1 to 3 has already been closed. Earlier evidence of defendant no. 12 was also closed, but subsequently, on his prayer, it was recalled and he is adducing evidence after cross-examining the plaintiff witness.

Now therefore, after the evidence of D.W. 12 only step is hearing the argument in the partition suit and if the petitioner will be allowed to adduce evidence in the suit then it will be de novo trial. Since admitted fact that petitioner is a purchaser of the part of the suit and if at all the suit will be decided in favour of the defendant no. 2 granting any share to him then it may be allowed in favour of the present petitioner as such he has get direct interest in the part of the suit property. It is not a case that the suit is proceeding ex parte. From the facts stated above, it appears that partition suit is hotly contested by the defendants.

In view of the above facts and circumstances of the case, the impugned order is modified and the petitioner is added as a

party defendant only for the purpose of protecting his interest and he is not granted liberty to file written statement and/or to adduce evidence in the suit as the suit is being hotly contested by the co-sharer of the plaintiff.

Accordingly, this Civil Miscellaneous Application is allowed in part and the petitioner is added as a party, subject to condition that he will not file written statement and adduce evidence.

(Mungeshwar Sahoo, J)

m.pal

U		T	
---	--	---	--