

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4197 of 2015

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Akbar Mian

.... Petitioner/s

Versus

Md. Jahangir & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 14-03-2016

Heard the learned counsel, Mr. Lalan Kumar Verma

for the petitioner.

By the impugned order dated 18.07.2014, the learned Sub Judge I, Bettiah rejected the application filed by the petitioner for being added as party in Final Decree Case No.8 of 2009.

It appears that partition suit was filed by the plaintiff-respondent. It was decreed. The pleader commissioner was appointed for preparation of final decree. At this stage, the petitioner filed application under Order 1 Rule 10(2) C.P.C. for being added as party on the ground that he has a share in the suit property and that the gift deed executed by Hikayat Mian in favour of Bibi Rasidan was in excess of his share.

The Court below held that the final decree is to be prepared according to the preliminary decree. The Court below, therefore, held that the petitioner is not a necessary party in this

final decree proceeding and his claim/right cannot be decided in final decree proceeding separately and rejected the application.

Perused the order passed by the Court below. Admittedly, the petitioner is not claiming any right through any of the party. His claim is independent. In other words, if he is made a party then in course of final decree the dispute between the parties to the original suit in one side and the case of the petitioner in other side will be a dispute which cannot be decided in this simple suit for partition.

Therefore, the Court below has rightly rejected the application, as such, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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