

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CIVIL MISCELLANEOUS JURISDICTION No.743 of 2016**

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1. Raj Kishore Thakur

2. Awadhesh Thakur Both are sons of Late Bhabhishan Thakur, resident of Mani Bhakurhar, P.S- Sarai, District- Vaishali .... Petitioners

Versus

1. Maheshwar Thakur @ Mahesh Thakur S/o Late Laxmi Thakur, resident of Mani Bhakurhar, P.S- Sarai, District- Vaishali.

2. Sudha Devi, D/o Late Julum Thakur, W/o Ajay Singh, Village- Chandwar, P.S. Lalganj, District- Vaishali.

3. Makhu Rai

4. Lal Bahadur Rai

5. Bindeshwar Rai Respondent No. 3 to 5 are resident of Anwar Pur, P.S- Sarai, District- Patna.

6. Most. Khakhiya, W/o Laxmi Thakur, resident of Mani Bhakurhar, P.S- Sarai, District- Vaishali .... Respondents

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**Appearance :**

For the Petitioners : Mr. Surya Kant Mishra, Adv.

For the Respondents : Mr. Ashok Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**

**ORAL JUDGMENT**

**Date: 08-12-2017**

Heard both sides.

2. The petitioners filed this civil miscellaneous petition against the order, dated 17.06.2016, passed in Title Suit No. 54 of 1996 by the Additional District Judge, VI, Vaishali at Hajipur, whereby the petition of the petitioners impleading them as respondents in Title Appeal No. 54 of 1996 has been dismissed.

3. Bhabhikshan Thakur, the father of the petitioners, purchased land from Julum Thakur. The plaintiffs filed suit for specific performance of contract stating therein that Julum Thakur executed a deed of agreement to sell. The suit was dismissed on contest on 31.08.1996. Plaintiffs preferred Title Appeal No. 54 of 96. Julum



Thakur, the vendor of the petitioners, executed sale deed during the pendency of the appeal. Bhabhikshan Thakur, the father of the petitioners, filed petition for impleading him as respondent since Julum Thakur died during the pendency of the appeal, but, his substituted heirs did not appear and contest the appeal. Bhabhikshan Thakur also died and no order was passed on his petition to implead him as respondent, thereafter, the petitioners filed the petition for their impleadment on the simple ground that since Julum Thakur died and his legal heirs did not appear, therefore, they may be impleaded in the appeal as intervenor respondents in the interest of justice, but, the same petition has been dismissed. Being aggrieved the petitioners filed this civil miscellaneous petition.

4. The learned counsel for the petitioners submits that so long Julum Thakur was contesting the suit, the petitioners did not file any petition for impleadment as their interest was protected by Julum Thakur, but, now Julum Thakur is no more and his legal heirs did not appear in the title appeal, consequently, the title appeal fixed for ex parte hearing, therefore, the petitioners should be impleaded.

5. Admittedly, the father of the petitioners purchased the land, subject matter of the suit, from Julum Thakur after dismissal of the suit. Plaintiffs preferred appeal, but, during pendency of the appeal vendor of the petitioners died. Legal heirs of vendor of the petitioners were



substituted, but, they did not appear in appeal. Petitioners admittedly acquired title over the lands during the pendency of appeal and they did not want to adduce any additional evidence, but, they want to contest the appeal on the evidence, available on records, therefore, on the facts, I find that petitioners should have been allowed to contest the appeal in order to protect their own interest.

6. Accordingly the order, dated 17.06.2016, passed in Title Appeal No. 54 of 1996 is set aside and the petitioners are allowed to contest the appeal.

**(Prabhat Kumar Jha, J)**

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| AFR/NAFR          | N/A        |
| CAV DATE          | N/A        |
| Uploading Date    | 09.01.2018 |
| Transmission Date | N/A        |

