

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.57 of 2017

=====

Munna Sah & Ors

.... Appellant/s

Versus

Ramavati Devi & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ramchandra Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 19-01-2017 **1.** Heard the learned counsel, Mr. Ramchandra Singh, for
the petitioner.

2. Perused the impugned order dated 14.07.2016 passed by
Sub Judge VIIIth, Sasaram in Final Decree Case No.399 of 2001
whereby the learned Court below rejected the application filed by
the intervener petitioner under Order 1 Rule 10 CPC for being
added as party in the final decree proceeding.

3. It appears that the aforesaid partition suit was filed by
the plaintiff-respondent. The present petitioner purchased the
property in the year 2006-07 from the defendants but he did not
file application for being added as party defendant in the suit till
the preliminary decree was passed. The preliminary decree was
passed on 31.03.2012 determining the rights of the parties. In the
final decree, the present petitioner filed application for being



added as party. By the impugned order, the Court below has rejected the application holding that his presence is not necessary for deciding the Takhtabandi.

4. It is admitted fact that during the pendency of the suit till the preliminary decree was passed, the petitioner did not file application for being added as party. It is also admitted fact that the present petitioner claimed to have purchased the property from the defendant No.1 in the year 2006-07. It is also admitted fact that the defendant No.1 has also granted share according to law in the preliminary decree.

5. The Hon'ble Supreme Court in the case of ***Gajara Vishnu Gosavi Vs. Prakash Nanasahed Kamble 2009 (4) PLJR 225 SC*** has held that 'if undivided share is sold by co-sharer, it may be unlawful, illegal as various statutes put an embargo. Therefore, a purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. He has a right only to sue for partition of the property and ask for allotment of his share in the suit property.'

6. In view of this settled principle now when the vendor of the petitioner has also been given a share in the property as submitted by learned counsel for the petitioner, the petitioners can



claim his share if at all he has purchased from defendant No.1 for adjustment in the share of the defendant No.1. But for that purpose, his presence is at all necessary for deciding the property which is to be allotted in favour of the defendant No.1.

7. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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

