

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1087 of 2016**

=====

Mahanth Harekrishna Das

.... Petitioner

Versus

Ashok Kumar Mahto & Ors

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Praveen Prakash

For the Respondents : Mr.

=====

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

ORAL ORDER

3 20-02-2017 Heard learned Senior Counsel Mr. Surendra Kumar Singh for the petitioner and learned counsel Mr. Yogendra Kumar for respondent no.9.

2. It appears that the plaintiffs filed Title Suit No.48 of 2006 praying for declaration of title and confirmation of possession. The present intervener-respondent no.9 filed intervention application under Order 1 Rule 10 (2) of the Code of Civil Procedure praying for being impleaded as party defendant in the suit. The defendant no.1-petitioner claimed that the petitioner is the real mahanth of Raghubir Chak Rampati Math. The intervener is claiming to be the Chela of original Mahanth Manmohan Das and according to the present petitioner, the petitioner is the successor in the office of Mahanth Manmohan Das.

3. By the impugned order dated 01.08.2016 the learned



Subordinate Judge-III, Madhubani has allowed the intervention application and added respondent no.9 as defendant in the suit.

4. Now, the dispute is between the defendant and intervener-defendant. Both are claiming to be the Chela of original Mahanth and the intervener is claiming to have acquired title on the basis of the gift deed of the year 1962, whereas according to the petitioner the gift deed has already been annulled by the Collector in the year 1975.

5. The Hon'ble Supreme Court in the case of **Kasturi Vs. Iyyamperumal and others, (2005) 6 Supreme Court Cases 733** interpreted Order 1 Rule 10 (2) CPC and held that **from a plain reading of the expression "all the questions involved in the suit" used in Order 1 Rule 10(2) CPC it is abundantly clear that the legislature clearly meant that only the controversies raised as between the parties to the litigation must be gone into, i.e. to say, controversies with regard to right which is set up and relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiffs or the defendants inter-se or questions between the parties to the suit and a third party.** Now, if the intervention application is allowed then the intervener is claiming independent title on the basis of the so-called gift deed and this



independent title is against the defendant no.1 and, therefore, this dispute will be inter-se dispute.

6. The learned counsel for the intervener submitted that the suit has been filed collusively to oust the intervener. This submission of the learned counsel clearly shows that if intervention application is allowed, the fighting will be in between the plaintiff and original defendant in one side and the intervener on the other side. Therefore, in view of the settled proposition of law the inter-se dispute between the defendant and defendant or the parties to the suit and third party cannot be decided in the present suit. It may be mentioned here that the counter claim also cannot be maintained by the intervener against the defendant. The court below has not considered this aspect of the matter.

7. In view of the above settled proposition of law, in my opinion, the learned court below exceeded his jurisdiction by adding the intervener as party defendant in the suit. Thus, this civil miscellaneous application is allowed. The impugned order is set aside. If, however, the intervener thinks that his right, title, interest and possession is affected then he may approach the appropriate forum by initiating appropriate proceeding.

Harish/-

U			
---	--	--	--

(Mungeshwar Sahoo, J)

