

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6779 of 2016

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Sri Sri 108 Ram Janaki Mandir Asthan Kaitola

.... Petitioner/s

Versus

Kapildeo Jha @ Kapildeo Das & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Nath Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 3 19-09-2017 **1.** Heard the learned counsel, Mr. Shashinath Jha, for the petitioner, learned senior counsel, Mr. J.S. Arora, for the respondent No.3 and the learned counsel, Mr. Ratnagar Jha, appearing for respondent No.1 and 2.
- 2.** By the impugned order dated 09.03.2016, the learned Sub Judge Ist, Madhubani in Title Suit No.415 of 2013 has rejected the application filed by the plaintiff petitioner under Order 1 Rule 10 Sub Rule 2 CPC for adding some person as party defendant in the suit on the ground that the suit is ready for hearing and secondly that no relevancy has been stated by the plaintiff as to whether they are sought to be added and thirdly that the High Court in Misc. Appeal No.345 of 2014 has directed the Court below to dispose of the suit expeditiously.
- 3.** From perusal of the application filed by the plaintiff



petitioner under Order 1 Rule 10 CPC, it appears that the plaintiff clearly stated that the defendant No.1 have sold the property to many persons and recently the plaintiff came to know that the defendant No.1 has sold the persons mentioned in the application who are necessary party, therefore, the plaintiff filed the application for adding them as party.

4. Therefore, in view of the statement made by the plaintiff in the application, it appears that the relevancy has been stated by the plaintiff. So far the stage of suit is concerned, the learned counsel for the petitioner submitted that only issues have been framed and parties have not yet started evidence. So far the direction of the High Court is concerned, it may be mentioned here that the direction of the High Court does not mean that the Court so proceed to decide the case flouting the fundamental principle of the Code of Civil Procedure.

5. The Hon'ble Supreme Court in *(2008)17 SCC 491 Bachhaj Nahar Vs. Nilima Mandal* has held that 'any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundament rules of CPC.'

6. The Hon'ble Supreme Court in the case of *Mumbai International Airport vs. Regency Convention Centre and Hotel*



Pvt. Ltd..(2010)7SCC 417 at paragraph 24.4 has held that if an application is made by the plaintiff for impleading someone as a proper party, subject to limitation bona fide etc., the Court will normally implead, if he is found to be a proper party.’ In the present case, the Court below has not considered as to whether the persons sought to be added are proper party or necessary party has rejected on the ground which are not teneable.

7. In view of the facts stated by the plaintiff that they are the purchasers from the defendant No.1 and that the plaintiff has challenged the authority of the defendant No.1 to transfer the suit property and for declaration that the sale made by defendant No.1 is either fraudulent or void, in my opinion, the Court below should have allowed the application filed by the plaintiff petitioner.

8. In the result, this writ application is allowed and the application filed by the plaintiff for adding four persons as party as mentioned in detail in the application under Order 1 Rule 10 CPC is also allowed and they are added as party defendant.

(Mungeshwar Sahoo, J)

Sanjeev/-

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