

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.18 of 2016**

=====

Mosst. Hemanti Devi & Anr

.... Petitioner/s

Versus

Smt. Amla Devi & Anr

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Navin Kumar Sinha

For the Respondent/s : Mr.

=====

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

ORAL ORDER

4 16-02-2017 Heard the learned counsel for the petitioners and the
learned counsel for the respondents.

Perused the impugned order dated 09.03.2016 passed
by learned Munsif, Danapur in Misc. Case No.2 of 2014 whereby
the learned Munsif deleted the names of the petitioners who are
opposite parties in the aforesaid miscellaneous case.

It appears that Title Suit No.29 of 1993 was filed by
Amla Devi for partition of the suit property against Indu Devi. The
said suit was decreed on compromise in the year 2003. The
petitioner herein purchased the property from Indu Devi in the
year 2006 by registered sale deeds. Thereafter, Amla Devi filed
title suit in the year 2007 for setting aside the compromise decree.
The objection was raised by the present petitioners who were
made party in the suit of the year 2007 regarding maintainability
of the suit. The objection of the petitioners was rejected and



thereafter the present petitioners filed civil revision before the High Court. The High Court by order dated 09.01.2014 passed in Civil Revision No.32 of 2011 considering the case of Banwari Lal and Horil held that the plaintiff's suit for setting aside the compromise decree is barred under Order 23 Rule 3A C.P.C. Thereafter, Amla Devi filed this present Misc. Case No.2 of 2014 under the provision of proviso to Order 23 Rule 3 of C.P.C. The petitioners were made opposite parties in this miscellaneous case. The applicant of the miscellaneous case namely Amla Devi then filed application for deleting the name of the present petitioners. By the impugned order, the court below has deleted the names of the petitioners.

It is admitted fact that Amla Devi is the daughter of Indu Devi. Earlier they both compromised in the Partition Suit No.29 of 1993 and on the basis of their compromise, a compromise decree was passed. Thereafter, Indu Devi sold the property. Thereafter, daughter filed miscellaneous case for setting aside the compromise decree. This miscellaneous case has been filed in the year 2014. The purchase made by the present petitioners is of the year 2006. Now therefore, the petitioners will be directly affected if any adverse order is passed in the miscellaneous case. As on today, the petitioners have got title over



portion of the purchased property. Further, the applicant is the daughter and opposite party is the mother and if the name of the petitioner is deleted, the mother and daughter may collide with each other and may both jointly pray for setting aside the compromise decree. In my opinion, therefore, the court below has wrongly deleted the names of the present petitioners at the instance of Amla Devi.

The Hon'ble Supreme Court in the case of **Amit Kumar Shaw and another v. Farida Khatoon and another, AIR 2005 Supreme Court 2209** has held that “a transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant, the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under O. 22, R. 10 an alienee pendente lite may be joined as party, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests.”

In view of the above settled proposition of law, in my opinion, the learned court below has wrongly exercised the



jurisdiction under Order I Rule 10(2) C.P.C. against the petitioners. If the order is allowed to stand, it will occasion failure of justice and may lead to multiplicity of proceedings.

Thus, this civil miscellaneous application is allowed. The impugned order is set aside. The application filed by Amla Devi under Order I Rule 10 C.P.C. for deleting the names of these petitioners is hereby rejected.

(Mungeshwar Sahoo, J)

Saurabh/-

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

