

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15341 of 2013

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1. Badari Chaudhary @ Badari Yadav S/O Late Babu Ram Chaudhary R/O Village - Mahpur, Paragana Bara, P.O. + P.S. Siwan And District - Siwan

2. Dhanai Chaudhary S/O Late Madai Chaudhary R/O Village - Mahpur, Paragana Bara, P.O. + P.S. Siwan And District - Siwan

3. Uma Devi D/O Late Chandra Deep Chaudhary R/O Village - Mahpur, Paragana Bara, P.O. + P.S. Siwan And District - Siwan

4. Jagdish Chaudhary S/O Late Munshi Chaudhary R/O Village - Mahpur, Paragana Bara, P.O. + P.S. Siwan And District - Siwan

5. Jang Bahadur Chaudhary S/O Late Munshi Chaudhary R/O Village - Mahpur, Paragana Bara, P.O. + P.S. Siwan And District - Siwan Petitioners

Versus

1. Baleshwar Prasad Sahi S/O Late Shri Raj Nath Sahi R/O Village - Deopura, P.S. Rashulpur, P.O. Deopur, District - Chhapra, At Present R/O Dharohara Bhawan Nai Basati Mahadewa, P.S. Siwan, District - Siwan

2. Mundrika Chaudhary S/O Late Lutawan Chaudhary R/O Village - Mahpur, P.O. Siwan, P.S. Siwan And District Siwan

3. Munna Yadav S/O Mundrika Chaudhary R/O Village - Mahpur, P.O. Siwan, P.S. Siwan And District Siwan

4. Heera Muni W/O Baijnath Prasad R/O Muhalla Sabuna Toli P.O. Siwan Town, District - Siwan Respondents

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Appearance :

For the Petitioner/s : Mr. Chandrakant , Adv.

For the Respondent/s : Mr. Shailendra Kumar Singh, Adv.

Mr. Bijay Shankar Choubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-01-2017

Heard Mr.Chandrakant, learned counsel

appearing for the petitioners and the learned counsel for the respondents.

By the impugned order, the learned court below

has rejected the prayer of the petitioners for being impleaded as party defendant in the suit under Order 1 Rule 10(2) of the C.P.C.

The matrix of facts discloses that the plaintiff



filed the suit for declaration of title and confirmation of possession over the suit land on the ground of purchase of the same from the defendants. The defendants contested the prayer of the plaintiff. During the pendency of the suit, the present petitioners filed the petition claiming that the suit property was the joint family property in which the petitioners had got interest. On the said basis, the petitioners made a prayer for their addition as party defendant in the suit. By the impugned order, the learned court below has turned down the prayer of the petitioners.

The learned counsel for the petitioners has submitted that the petitioners have got direct interest in the suit property as according to their case it is the joint family property which has been sold to the plaintiff. It has been propounded that even a semblance of interest of the petitioners in the suit property would entitle the petitioners to be impleaded as party in the suit. The learned counsel for the petitioners has further submitted that the petitioners should not be relegated to file another suit in order to protect their interest when the same matter can be decided in the suit.

After considering the submissions and the perusal of the impugned order, it is manifest that the plaintiff has filed the suit on the basis of his purchase by the sale deed from the defendants. The petitioners, according to their case, might have an



interest in the property which has been purchased by the plaintiff but as they are not parties in the suit, any decree passed in the suit would not be binding upon the interest of the petitioners in the suit property. The apex court in the case of ***Ramesh Hiranand Kundanmal Vs. The Municipal Corporation of Greater Mombay, JT 1992 (2) S.C. 116*** has ruled that a person having independent cause of action cannot be made party in the suit and further that the refusal of the prayer leading to multiplicity of proceeding also cannot be the reason for exercise of jurisdiction under Order 1 Rule 10(2) C.P.C.

In view of the aforesaid fact, this Court is not inclined to interfere in the impugned order.

The application is, accordingly, dismissed.

At this juncture, the learned counsel for the petitioners has prayed that the liberty be granted to the petitioners to file their own suit or take up appropriate proceeding for protection of their interest in the suit.

It goes without saying that this order would not prejudice the right of the petitioners available to them in accordance with law for protection of their right, title and interest in the suit property.

(V. Nath, J)

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