

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1390 of 2016**

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Braj Kishore Khan & Anr

.... Appellant/s

Versus

Dhirendra Kumar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Mishra

For the Respondent/s : Mr.

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

3 13-01-2017 Heard the learned senior counsel, Mr. Anil Kumar Jha
for the petitioner.

Perused the impugned order dated 24.08.2016 passed by
learned Sub Judge I, Saharsa in Title Suit No.130 of 2003 whereby
the learned Court below has allowed the application under Order I
Rule 10 C.P.C. filed by the purchaser-respondents during the
pendency of the suit.

The learned senior counsel, Mr. Jha relied upon various
decisions of this Court as well as the Supreme Court such as
A.I.R. 2010 Patna 5 and (2010) 7 Supreme Court Cases 417.

In all these decisions, the Supreme Court has held that
the addition of a party is the discretion of the court as Order I Rule
10 speaks about the jurisdiction of the court and not right of the
parties. A person whose application has been rejected has no
inherent right for being impleaded as party in a suit. However, the



Supreme Court has clarified this matter in AIR 2005 Supreme Court 2209 and it has been 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 Order XXII Rule 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 interest.”

Now therefore, when the court below has exercised a discretionary jurisdiction according to the decision of the Supreme Court, there is no question of interference in exercise of supervisory jurisdiction under Article 227 arises.

Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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