

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1104 of 2016**

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Chandeshwar Mahto

.... Petitioner

Versus

Ram Gulam Mahto & Anr

.... Respondents

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Appearance :

For the Petitioner : Mr. Devendra Kumar

For the Respondents : Mr.

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

ORAL ORDER

3 22-02-2017

Heard learned counsel for the petitioner.

Perused the impugned order dated 29.06.2016 passed by the learned District Judge, Sitamarhi in Title Appeal No.06 of 2014 whereby the learned court below rejected the intervention application filed by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure before the lower appellate court.

The admitted fact is that the plaintiff's suit has been dismissed by the trial court. Against the judgment and decree the plaintiff has filed Title Appeal No.06 of 2014 before the lower appellate court. During the pendency of this title appeal the present petitioner has purchased the entire suit property from the defendant-respondent in the lower appellate court. The court below rejected the intervention application on the ground that the purchase is hit under Section 52 of the Transfer of Property Act.

The Hon'ble Supreme Court in the case of **Amit**



Kumar Shaw and another Vs. Farida Khatoon and another,
A.I.R. 2005 Supreme Court 2209 has held that though the plaintiff is under no obligation to make a lis pendens transferee a party under Order 22 Rule 10 CPC 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. 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.

In view of the above settled proposition of law, in my opinion, the learned lower appellate court has wrongly refused to exercise a jurisdiction vested in it by law. Accordingly, this civil miscellaneous application is allowed. The impugned order is set aside and the intervention application filed by the petitioner is hereby allowed.

(Mungeshwar Sahoo, J)

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