

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17620 of 2012

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Rameshwar Sah & Ors

.... Petitioner/s

Versus

Dr. Birendra Kumar Seth & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rewti Kant Raman

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

8 11-09-2017 Heard the learned counsel, Mr. Mahesh Prasad No.2 for the petitioners and the learned counsel, Mr. Amrit Abhijat for the respondent Nos.1 to 4 and the learned counsel, Mr. Rajni Kant Pandey for the respondent No.6.

This writ application has been filed by the petitioners under Article 227 of the Constitution of India against the order dated 07.08.2012 passed by Sub Judge I, Kaimur, Bhabhua in Title Suit No.213 of 2006 whereby the learned court below has rejected the application under Order I Rule 10(2) of the Code of Civil Procedure.

The learned counsel for the petitioners submitted that admittedly the suit property(residential house) stands in the name of respondent No.9, Mostt. Chameli Kuer as it is her self-acquired property. The petitioners have purchased the property from her by registered sale deed dated 12.08.2011. The sons of Mostt. Chameli



Kuer have filed partition suit claiming share of the said property. The plaintiff's mother, respondent No.9 sold the property to the present petitioners, therefore, they filed application for being added as party in Title Suit No.213 of 2006. The court below by the impugned order has rejected the said application. If the impugned order is allowed to stand then it will prejudice the defendant-petitioners as there will be no one to defend the right of the present petitioners.

On the other hand, the learned counsel for the respondents submitted that there is status quo order passed by the court below and, therefore, the respondent No.9 could not sell the property and the purchaser-petitioners knowing the status quo order have purchased the property. In the counter-affidavit, Annexure F has been annexed. The learned counsel submitted that in the year 2007, injunction application was filed wherein status quo order was passed and from 2007, the said status quo order was continued from time to time and it was operative on the date of the sell of the property.

It is admitted fact, as has been admitted by the learned counsel for the respondents, that the house in question was purchased in the name of respondent No.9. The claim of the plaintiff is that their mother had purchased the property in the



name of their mother, therefore, their mother is not the owner of the property rather the plaintiffs have also got a share as the property is joint family property.

On the other hand, the case of respondent No.9 is that it is her self-acquired property as stated in the written statement. Now therefore, in view of the controversies between the parties, this point is to be decided as to whether the property is joint family property or it is the self-acquired property of Mostt. Chameli Kuer. Admittedly, the plaintiffs are the sons of said Chameli Kuer.

The Hon'ble Supreme Court in **AIR 2005 Supreme Court 2209(Amit Kumar Shaw and another vs. Farida Khatoon and another)** 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, 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 joint as a party to enable him to protect his interest.

In the present case, it is admitted fact that the entire



residential building has already been sold by Mostt. Chameli Kuer, the respondent No.9 in favour of the petitioners. Now, if the petitioners are not made party then there is no one to protect their interest in the title suit. The respondent No.9 being the mother of the plaintiffs-respondent Nos.1 to 4 may collude with them.

From perusal of the impugned order, it appears that the court below only on the ground that there is status quo order has rejected the intervention application without considering the law laid down by the Supreme Court referred to above.

In the result, this writ application is allowed. The impugned order is set aside. The intervention application filed by the petitioners is allowed and they are made party-defendant in the suit.

The learned counsel, Mr. Mahesh Prasad No.2 appearing on behalf of the petitioners submitted that he will file written statement within one month from the date of receipt of a copy of this order by the court below.

(Mungeshwar Sahoo, J)

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