

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1878 of 2013

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Kamlesh Kumar

.... Petitioner/s

Versus

Vinay Kumar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Parasmani

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

6 30-10-2017 Heard the learned counsel, Mr. Sanjay Parasmani for the petitioner and the learned counsel, Mr. Arun Kumar Prasad for the respondents.

This writ application under Article 226 of the Constitution of India is treated as an application under Article 227 of the Constitution of India. This writ application has been filed by the intervener-petitioner for setting aside the order dated 19.12.2012 passed by the learned Sub Judge 7th, Muzaffarpur in Partition Suit No.608 of 2010 whereby the learned Sub Judge has rejected the intervention application filed by the petitioner in the partition suit.

The learned counsel for the petitioner submitted that the petitioner has purchased the property from the defendant Nos.8 and 9 in the year 2012 during the pendency of this partition suit. The learned counsel further submitted that the vendor did not



appear in the suit because they have already parted their interests in the suit property, as such, this partition suit is proceeding ex parte against them. In such circumstances, if the petitioner is not added as party, the petitioner shall suffer serious loss and it will occasion failure of justice.

On the other hand, the learned counsel, Mr. Arun Kumar Prasad for the respondents submitted that the intervener is a purchaser during the pendency of the suit and, therefore, his purchase is hit by the principles of lis pendens as provided under Section 52 of the Transfer of Property Act. The learned counsel relied upon the decision of this Court, 2012(1) PLJR 259.

Perused the impugned order. It appears that reason assigned by the court below is that the purchase made by the petitioner is hit by the principles of lis pendens. The court below nowhere has decided as to whether the petitioner, who is purchaser, during the pendency of the suit is a necessary party or not. The court below has also not decided as to what will happen to the share of the vendor who are not contesting the partition suit and the suit is proceeding ex parte against them.

The Hon'ble Supreme Court in **AIR 2005 Supreme Court 2209(Amit Kumar Shaw and another v. 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, 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.”

The court below has not considered the principles laid down by the Supreme Court and has rejected the application on the ground on which the application could not have been rejected.

Thus, this writ application is allowed. The impugned order is set aside and the petitioner is added as party in the partition suit.

(Mungeshwar Sahoo, J)

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