

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.6 of 2017

In
C.Misc. 276 of 2016

=====

Prashansha Rani Singh & Ors

.... Petitioner/s

Versus

Sri Baijnath Sah & Anr

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Anish Chandra Sinha

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

6 10-07-2017 **1.** Heard the learned counsel, Mr. Anish Chandra Sinha, for the
petitioner and the learned counsel for the respondent No.1.

2. This review application has been filed by the interveners
petitioners for reviewing the order dated 14.12.2016 passed by this
Court in Civil Misc. No.276 of 2016 whereby this Court has dismissed
the Civil Misc. Case No.276 of 2016 for adding the party defendants in
Title Suit No.58 of 2008 pending before Sub Judge III, Patna City.

3. It appears that the said Misc. case was filed by the
interveners against the order of the trial Court whereby their application
for being added as party in a suit for specific performance of contract
was rejected.

4. It appears that the suit for specific performance was filed by
the plaintiff opposite party against the defendant opposite party. The
interveners filed the application for addition of party



on the ground that they have also got a share in the property and in fact they have filed partition suit against the defendant respondent.

5. The learned counsel, Mr. Anish Chandra Sinha, appearing on behalf of the appellant relying on the decision of the Hon'ble Supreme Court in the case of *Sumti Bai Vs. Paras Finance 2008(1) PLJR 78 SC* submitted that the Hon'ble Supreme Court in this case at paragraph 14 has held that 'in view of the aforesaid decisions, we are of the opinion that Kasturi's case is clearly distinguishable. In our opinion, it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by (a) against (b) a third party, she can never be impleaded in the suit. In our opinion, if he can show a fair symbolize of title or interest, he can certainly file an application for impleadment.' According to the learned counsel for the petitioner, since the petitioner have filed partition suit against the defendant opposite parties, they have got symbolizes of title and, therefore, according to decision of the Hon'ble Supreme Court, they are entitled for impleadment in the suit for specific performance.

6. It may be mentioned here that considering the two conflicts views taken by the Hon'ble Supreme Court, the matter as



taken up by Hon'ble Supreme Court again in *(2010) 7 SCC 417* considered both these decisions, i.e., Kasturi's case and Sumti Bai's case and at paragraph 19 has held that 'referring two suits for specific performance, this Court in Kasturi held that the following persons are to be considered as necessary parties (i) the parties to the contract which is sought to enforce or they are legal representatives. (ii) a transferee of the property which is the subject matter of the contract. This Court also explained that a person who has a direct interest in the subject matter of the suit for specific performance of an agreement of sell may be impleaded as a proper party on his application under Order I Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased with or without notice of the contract but a person who claims a title adverse to that of the defendant vendor will not be a necessary party. In the present case, it is admitted fact that the present petitioner have filed a suit for partition against defendants, therefore, this inter se dispute between defendants and the intervener who will be defendant cannot be decided in this present suit and the interveners are claiming title adverse to the defendant vendor.

7. Moreover, so far review is concerned, on the ground of merit review is not maintainable. So far the submission of learned



counsel for the petitioners is concerned, it relates to the merit of the case.

8. Thus, in my opinion, no case for review is made out. Accordingly, this review application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

U			
---	--	--	--

