

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.292 of 2016**

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Savitri Devi & Anr

.... Appellant/s

Versus

Lalmuni Devi & Ors

.... Respondent/s

=====

with

CIVIL MISCELLANEOUS JURISDICTION No.1457 of 2016

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Lalmuni Devi & Ors

.... Appellant/s

Versus

Savitri Devi & Ors

.... Respondent/s

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Appearance :

(In C.Misc. No.292 of 2016)

For the Appellant/s : Mr. Md. Helal Ahmad

For the Respondent/s : Mr. Gautam Bose- Aag8

(In C.Misc. No.1457 of 2016)

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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

6 10-02-2017 **1.** Heard the learned counsel for the petitioner and the
learned counsel for the respondent.

2. The Civil Misc. application No.292 of 2016 has been
filed by the petitioners against the order dated 12.04.2016 and
28.04.2016 passed by learned Sub Judge III, Patna city Patna in
Execution Case No.01A of 1998 whereby the application filed by
the present petitioners for being added as party in the execution
case has been rejected whereas the other Civil Misc. application
No.1457 of 2016 has been filed by the petitioner who are



respondent in the above Misc. case against the order dated 21.03.2016 passed by Sub Judge III, Patna city in Misc. Case No.5 of 2013.

3. It appears that the suit for specific performance of contract was decreed in favour of the plaintiff who are the respondent in Civil Misc. No.292 of 2016 and petitioner in Civil Misc. No.1457 of 2016. The plaintiff then filed aforesaid Execution Case No.01A of 1998. In the execution case, the petitioner of Civil Misc. No.292 of 2016 filed objection under Order 21 Rule 99, 101 CPC objecting to the maintainability of the execution case. The application was registered as Misc. case No.5 of 2013. Thereafter, they filed application under Order 1 Rule 10 CPC for being added as party in the execution case. The learned Court below in the order rejected the application under Order 1 Rule 10 CPC on the ground that the application under Order 21 Rule 97, 98, 101 have been filed by the present petitioner. Therefore, they are not required to be added as party as they are not necessary party. Against this, the first Civil application has been filed.

4. It further appears that in the Misc. case filed under Order 21 Rule 99 CPC, the stranger claimed to have purchased the



property in the year 2003 and 2010 respectively and they filed application under Order 21 Rule 99, therefore, the decree holder respondent who are petitioner in Civil Misc. No.1457 of 2016 filed objection to the maintainability of the Misc. case on the ground that the said strangers are the purchasers during the pendency of the execution case, therefore, Order 21 Rule 99, 101 CPC is not applicable in view of the provision as contained in Order 21 Rule 102 CPC. But the learned Court below by the order dated 21.03.2016 rejected the objection and admitted the Misc. case.

5. Since both the Civil Misc. application is between the same parties and the orders are passed in the same execution case and / or the Misc. case, both Civil Misc. applications are heard together in admission matter.

6. From perusal of the objection application under Order 21 Rule 98, 99, 100 and 101 CPC, it appears that the strangers, i.e., objector to the execution case have specifically mentioned at paragraph 1 and paragraph 3 itself that they have purchased the property on 10.06.2003 and 23.02.2010. Admitted fact is that the execution case have been filed in the year 1998.

7. Order 21 Rule 102 CPC provides that nothing in Rule



98 and 100 shall apply but resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person. Now, therefore, if Order 21 Rule 98 and 100 is not applicable in the case of subsequent transferee then there is no question of hearing of the application under Order 21 Rule 98, 100 CPC arises. Except this claim, they have not raised any other ground that they are interested party in the case or that they came in possession prior to the institution of the suit in the objection application.

8. In view of the above factual position that they are the subsequent transferee, Order 21 Rule 99, 100 CPC is not applicable, therefore, the objection application, i.e, Misc. case No.5 of 2013 itself is not maintainable. The Court below has wrongly exercised the jurisdiction by admitting this Misc. application. Therefore, the impugned order admitting the Misc. case is hereby set aside. The Misc. case is rejected as not maintainable. Therefore, in view of the above facts and circumstances of the case, the application for addition is also not maintainable and they are not necessary party in hearing the execution case. If they have got any right, title or interest over the



property, they are at liberty to institute separate suit.

9. In view of the above facts and circumstances of the case, this Civil Misc. application No.292 of 2016 is hereby dismissed. The Civil Misc. application No.1457 of 2016 is allowed. The impugned order challenged in this Civil Misc. application is set aside.

(Mungeshwar Sahoo, J)

Sanjeev/-

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