

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.996 of 2016

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1. Om Sharma, S/o Ganesh Sharma Thakur
 2. Pappu Sharma, Son of Ganesh Sharma Thakur.
 3. Mukesh Sharma, Son of Ganesh
 4. Navin Sharma, S/o Amarnath Sharma.
 5. Pravin Sharma, S/o Amarnath Sharma.
 6. Amarnath Sharma, S/o Kishun Sharma.
 7. Mahesh Sharma, S/o Ganesh Sharma All resident of Muhalla Mahalpar, Town and PS- Biharsharif, Distt.- Nalanda.

.... Petitioners

Versus

1. Rajeshwar Prasad, S/o Parmeshwar Dayal Thakur, resident of muhalpar Town Biharsharif, Ward No. 6, PS- Biharsharif Distt.- Nalanda, at present Mahua Dhangal, Town Asansol Distt.- Burdwan.
2. Shrawan Kumar Verma, S/o Govind Mahto, resident of Muhalla Mahalpar, PS- Biharsharif, Distt.- Nalanda.

.... Respondents

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

4 25-05-2017 Nobody appears on behalf of the petitioners in spite of repeated calls. Learned Counsel for respondent No. 2 is present and has been heard.

Earlier by order dated 9.11.2016 the notice was issued to respondent No. 2 in the admission matter.

By the order impugned in this application the learned court below has allowed the prayer of respondent No. 2 to be added as plaintiff in the suit. The facts are not in dispute that the suit was filed for partition by the two brothers namely Kailashpati Sharma and Rajeshwari Prasad Sharma. It appears that during pendency of the suit one of the plaintiffs namely Kailashpati Sharma died and his



heirs refused to be impleaded as party. Later on, the another plaintiff namely Rajeshwari Prasad Sharma sold the suit land to respondent No. 2 Shrawan Kumar Verma by sale deed dated 31.3.2014 and on that basis respondent No. 2 Shrawan Kumar Verma made the prayer for his impleadment as party plaintiff in the suit.

It, however, transpires from the impugned order as well as the records of the case that there was earlier an order of injunction passed in the suit on 26.7.2006, whereby the learned court below directed the parties to maintain *status quo* and further directed the parties not to alienate the suit property till disposal of the suit. It is the case of respondent No. 2 himself, as made out in his petition for impleadment, that he has been making *pairvi* in the suit on behalf of the plaintiff. This fact is further corroborated by his deposition (Annexure 3) as a witness in the suit on behalf of the plaintiff. This Court, therefore, is not persuaded to align with the submission made by the learned Counsel for respondent No. 2 that the respondent No. 2 had no knowledge of the pending suit. Manifestly, therefore, the suit property has been purchased by respondent No. 2 during pendency of the suit and subsistence of the injunction order and, therefore, in view of the law laid down by the apex court in the case of **Surjit Singh & Ors. Etc. Etc vs Harbans Singh & Ors. AIR 1996 SC 135** such transfer would be void. The learned Court below, however, has failed to take into notice the said fact and has allowed the prayer of respondent No. 2 to be impleaded as plaintiff in the suit even though he is purchaser of only a part of the suit property, which is the share of one of the plaintiffs namely



Rajeshwari Prasad Sharma and definitely he could not pursue the case of another plaintiff Kailshpati Sharma. The law is well settled that a person to be transposed must be in a position to represent the entire interest of the plaintiff in the suit. In that view of the matter also, the impugned order cannot be sustained. The ground as mentioned in the impugned order pertaining to multiplicity of proceeding cannot withstand scrutiny in view of the settled principle of law.

In the result, this application is allowed and the impugned order is set aside.

(V. Nath, J.)

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