

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1994 of 2017**

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Om Prakash Rai & Ors

.... Petitioner/s

Versus

Mehrun Hussain & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anuj Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA**

ORAL ORDER

2 26-06-2018 Heard Mr. Pramod Kumar Singh, learned counsel
appearing on behalf of the petitioners.

The petitioners have filed this civil miscellaneous petition against the order dated 15.07.2017 passed by Sub Judge I, Motihari in Title Suit No.818 of 2013 by which the petition of the petitioner filed under Order I Rule 10 C.P.C. has been dismissed.

Mr. Pramod Kumar Singh, learned counsel for the petitioner submits that the suit land originally belonged to one Janki Mishra who sold the same to Bhagwan Das vide sale deed dated 04.02.1961. Gokul Das was real purchaser and Bhagwan Das was only name lender. Bhagwan Das subsequently executed a deed of ladavi on 05.01.1962 in favour of Gokul Das admitting the fact that Gokul Das was real purchaser of the property. Gokul Das died issueless leaving behind his two brothers, Tejmal Das and Gopal Das. Tejmal Das executed a registered power of attorney on



19.09.2012 in favour of Baidyanath Rai, defendant No.1. Baidyanath Rai executed a sale deed on 22.09.2012 in favour of the petitioner with regard to 1 katha 4 dhurs of land, therefore, the petitioner has got right but the plaintiff did not make the petitioner as defendant in the suit. The plaintiff filed the suit against Baidyanath Rai for declaration of title and confirmation of possession but the learned Sub Judge illegally dismissed the petition of the petitioner for being impleaded as defendant.

It appears from perusal of the ordersheet that admittedly Janki Mishra sold the land to Bhagwan Das on 04.02.1961. Bhagwan Das took loan from Omkar Nath Jalan and mortgaged the suit property when Bhagwan Das did not pay the loan, Omkar Nath Jalan filed mortgage suit. Mortgage suit was decreed. Thereafter, Omkar Nath Jalan filed Execution Case No.6 of 1968 against Bhagwan Das in which Gokul Das, the brother of Bhagwan Das in whose favour Bhagwan Das is said to have executed unregistered ladavi filed petition under Order 21 Rule 58 C.P.C. on 02.01.1969 for adjudication of his claim over the suit land on such petition, Misc. Case No.1 of 1969 was registered but on account of non-pursuance of the miscellaneous case the same was dismissed on 21.11.1970. Then in execution case the suit land was put on auction and Omkar Nath Jalan himself purchased the



land. The sale was confirmed by the court and possession was handed over to Omkar Nath Jalan. The plaintiff got the land from Omkar Nath Jalan but the case of the petitioner who wanted to intervene in the case is that Gokul Das got the land by virtue of the aforesaid ladavi deed and two brothers of Gokul Das inherited the property and Gokul Das died issueless. Baidyanath Rai who happens to be father of the petitioner got power of attorney from Tejmal Das, one of the brothers of Gokul Das. Thus, it appears that Gokul Das contested the mortgage suit but he did not succeed and ultimately the suit property was auction sold and Omkar Nath Jalan purchased the suit land. Therefore, Tejmal Das and Gokul Das did not inherit the property purchased in the name of Bhagwan Das as the same has already been concluded vide judgment and decree passed in mortgage suit for which Execution Case No.6 of 1968 was filed. Therefore, I find that the learned Sub Judge has rightly rejected the petition of the petitioners for being impleaded as defendant in the suit.

Accordingly, this civil miscellaneous petition is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

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