

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19735 of 2013

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1. Smt. Asha Devi W/o Surya Narain Yadav, resident of Village Hardiya,
P.S- Chautham, District- Khagaria.

.... Petitioner

Versus

1. Fuleshwari Devi W/o Late Mahabir Pandit resident of Village- Rupani,
P.O and P.S- Chautham, District- Khagaria.
2. Ashutosh Kumar Bharti S/o Late Mahabir Pandit resident of Village-
Rupani, P.O and P.S- Chautham, District- Khagaria.
3. Shivendu Kumar Bharti S/o Late Mahabir Pandit resident of Village-
Rupani, P.O and P.S- Chautham, District- Khagaria.
4. Babita Devi W/O Pramod Pandit and D/o Mahabir Pandit resident of
Village Khapatia, P.S- Saur Bazar, District- Saharsa.
5. Archana Devi W/o Sudhansu Pandit and D/o Mahabir Pandit resident of
Dumri, P.S- Barhiya, District- Patna
6. Kailash Pandit S/o Ramdeo Pandit resident of Village Rupani, P.S-
Chautham, District- Khagaria.
7. Kuldip Pandit S/O Late Shyamlal Pandit resident of Village Rupani, P.S-
Chautham, District- Khagaria.
8. Siya Devi W/o Late Ramdeo Pandit resident of Village Rupani, P.S-
Chautham, District- Khagaria.
9. Satni Devi W/O Punit Pandit and D/o Late Baldeo Pandit resident of
Village Lagma, P.O- Chautham, P.S- Chautham, District- Khagaria.
10. Badam Devi W/o Jageshwar Pandit and D/o Late Shyamdeo Pandit
Resident of Village Banni, P.O- Banni, (Maheshkhut), P.S- Gogari, District-
Khagaria.
11. Daho Devi W/o Late Bishwanath Pandit and D/o Late Shyamlal Pandit
resident of Village Baisha, P.O- Baisha, P.S- Parbatta, District- Khagaria.
12. Soma Devi W/o Late Bilayati Pandit and D/o Late Shyamlal Pandit
resident of Village- Vaisha, P.O- Vaisha, P.S- Parbatta, District- Khagaria.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dronacharya, Advocate
For the Respondent/s : Mr. Kamla Pd. Roy, Advocate
Mr. Shambhu Sinha, Advocate
Ms. Seema Kumari, Advocate
Mr. Satya Ranjan Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-04-2018

This writ application has been filed for quashing the order
dated 23.08.2013 passed by learned Subordinate Judge-III, Khagaria



in Title Suit No.33 of 2007 whereby and whereunder the petition of this petitioner filed under Order 1 Rule 10(2) read with Section 151 of C.P.C. for impleading her as party to the suit was rejected.

2. Heard learned counsel for the petitioner as well as the respondents.

3. The fact, in brief, is that the respondent nos.1 to 5 filed aforesaid Title Suit No.33 of 2007 against the other respondents for partition of joint family property. The petitioner during the pendency of the suit purchased land measuring 1 bigha 18 katha under different plots from one of the defendants, namely Siya Devi by virtue of registered sale deed dated 31.05.2007. The petitioner got her name mutated in the year 2008. Thereafter she filed an application before the court below on 22.01.2013. The plaintiffs filed rejoinder and after hearing, the court below rejected the intervener's petition as per the impugned order.

4. The learned counsel for the petitioner submits that the petitioner is bonafide purchaser from one of the co-sharers of the plaintiffs. The suit was filed on 17.05.2007 and plaint was admitted on 28.05.2007. The petitioner had no knowledge about the said suit and she after paying valuable consideration, purchased portion of the suit property from one of the co-sharers of the plaintiffs. The petitioner being bonafide purchaser has right to protect her interest



and so she is necessary party to the suit.

5. Learned counsel for the respondents, on the other hand, submits that the intervener cannot be impleaded as party to the suit. The petitioner intervener has purchased the land from Siya Devi who was widow of Baldeo Pandit and after the death of Baldeo Pandit the said Siya Devi married with Ramdeo Pandit, who was the full brother of her first husband. The vendor of the intervener petitioner while executing the sale deed in her favour has disclosed herself as widow of Baldeo Pandit. The said Baldeo Pandit had a daughter who has not been impleaded as party to the suit. The said Siya Devi had no right to execute the sale deed with respect to the property left by Baldeo Pandit who had other heirs also. The learned counsel for the respondents further submits that after the death of Baldeo Pandit, his widow was getting freedom fighter pension from the government. The daughter of Baldeo Pandit raised objection whereafter her pension was stopped by the government and an order was issued for recovery of the amounts which she had taken in family pension. The widow of Baldeo Pandit filed L.P.A. which was dismissed as per the impugned order dated 06.05.2015 with modification that no recovery will be made from the appellant and the Certificate Case No.01/13-14 pending in the court of District Certificate Officer, Khagaria for recovery of pension amount was quashed.



6. From the submissions of the parties, it appears that the plaintiffs and defendants 2nd set have already closed their evidence and the defendants 1st set have examined four witnesses. The vendor of the petitioner, namely, Siya Devi has been examined in this case and the case is at the fag end of trial. The learned court below while rejecting the prayer of the petitioner has observed that the sale deed has been executed during the pendency of the suit and after a delay of six years, she has filed an application without explaining any reason, although she had full knowledge about the pendency of the suit. The intervener purchased the land from a lady whose share is being disputed by the plaintiffs.

7. In the case of **Dhurandhar Prasad Singh Vs. Jai Prakash University and Ors., (A.I.R. 2001 Supreme Court 2552)** the Hon'ble Apex Court has observed that "where a party does not ask for leave, he takes the obvious risk that the suit maynot be properly conducted by the plaintiff on record, and yet, he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary". In the case in hand, the petitioner claims to be purchaser from one of the defendants who is already on record and has also deposed in support of her case. It is not the case of the petitioner that her vendor has



colluded with the plaintiffs or any other defendants against her interest.

8. In view of above fact, I find that the court below has rightly rejected the petition of this petitioner. The impugned order does not suffer from any illegality requiring any interference under the inherent power of this court. This writ application is accordingly dismissed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.04.2018
Transmission Date	

