

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1292 of 2016**

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1. Princeton Niketan Pvt. Ltd. a company incorporated under the India Companies Act, 1956 through its Managing Director, Sri Jitendra Singh S/o Sri Chandeshwar Singh, Resident of 004, Mirambika Apartment, Boring Road, Patna-1

.... .... Petitioner

Versus

1. Bullu Imam S/o Late Syed Askari Hadi Ali Augusteen Imam @ Tootoo Imam R/o Dipugrah, Hazaribagh, PS:- Hazaribagh, District Hazaribagh( Jharkhand)
2. Syed Hasan Francis Imam S/o Syed Askari Hadi Ali Augusteen Imam R/o Kehilan, Village:- Kesura, Sub-PO Rola, Under Head Post Office Hazaribagh, PS:- Moffusil, Hazaribagh, District Hazaribagh (Jharkhand)
3. Jitendra Kumar Sinha, Advocate through Syed Askari Hadi Ali Augusteen Imam R/o Konar Avenue, Ranchi, Hazaribagh, District:- Hazaribagh(as per the Plaint in the Title Suit No.71/2000) at present R/o Kehilan, Village:- Kesura, Sub-PO Rola, Under Head Post office Hazaribagh, PS:- Moffussil, Hazaribagh, District:- Hazaribagh (Jharkhand)
4. Harish Reddy S/o Mr. Vijendra Reddy, R/o 1406, Babu Khan Estate, Bashir Bagh, Hyderabad, Andhra Pradesh:- 500001.
5. Sri Syed Akabir Hussain S/o Syed Sakir Hussain R/o Mohalla:- Hussain Khan Serai, PO:- Sambhal, District:- Muradabad, Uttar Pradesh
6. Dr Shahida Hasan D/o Late Syed Hasan Ahmad Sami W/o Azfar Hasan, R/o Ramna Road, Naya Tola, Near Sapna Apartment, P.S. Pirbahore, Town and District-Patna

.... .... Respondents

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**Appearance :**

For the Appellant/s : Mr. Shivendra Kumar Roy  
For the Respondent/s : Mr.

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

18    17-09-2018                      Heard Mr. J.S. Arora, learned senior counsel for the petitioner and Mr. Ganpati Trivedi, learned senior counsel appearing on behalf of the respondents.

Petitioner filed this civil miscellaneous petition under Article 227 of the Constitution of India for setting aside the part of



the order dated 29.09.2016 passed in Title Suit No.71 of 2000, whereby the learned Sub-Judge-XI, Patna rejected the petition of the petitioner filed under Order 1 Rule 10 read with order 22 Rule 10 of the Civil Procedure Code for impleading him as co-plaintiff in the suit.

The facts relevant for disposal of the case is that one Late Syed Mehendi Imam died in the year 1987, leaving behind his widow, now deceased, namely Saiyeda Mehendi Imam and one unmarried daughter namely Shamim Ameena Imam as his legal heirs. Shamim Ameena Imam, the daughter of original plaintiff was gifted the property including the suit properties. Shamim Ameena Imam died unmarried on 23.05.1998, and according to the plaintiff, the property gifted to Shamim Ameena Imam automatically devolved on sole surviving legal heir Late Sayeida Mehendi Imam, the plaintiff. Late Shamim Ameena Imam is said to have executed a will on 03.05.1998 with regard to her property in favour of the respondent no.1. The plaintiff filed Title Suit No.71/2000 that the will dated 03.05.1998 executed by Shamim Ameena Imam is forged, fabricated and manipulated documents and unenforceable and void. The will is fraudulent act of the respondents, and as such, respondents did not have any right in the property left by Late Shamim Ameena Imam. During the



pendency of the suit, the plaintiff Late Sayeida Mehandi Imam is said to have executed a deed of agreement for selling the property mentioned in Schedule-II of the plaint on 01.03.2003 in favour of the petitioner, according to terms and condition of the agreement, the petitioner paid Rs. 10 lack to the plaintiff and remaining amount was to be paid after disposal of the suit. It is also agreed that the petitioner would bear cost and expenses of the litigation in the Title Suit on behalf of the plaintiff. During pendency of the suit, the original plaintiff died and the petitioner filed petition on 12.09.2014 under Order 1 Rule 10 of the C.P.C. to be impleaded as intervener plaintiff in the suit on the basis of the deed of agreement of sale dated 01.03.2003 executed by Late Sayeida Mehandi Imam, the original plaintiff in favour of the petitioner. The learned Sub-Judge after hearing both sides dismissed the petition of the petitioner vide order dated 29.09.2016, holding that only execution of agreement for sale does not give any right to any person over any property in respect of which the deed of agreement for sale is executed and on the basis of agreement for sale the petitioner is not a necessary or proper party and the suit can be effectively adjudicated upon without impleading the petitioner in the suit. Being aggrieved, the petitioner filed this petition against the aforesaid order.



Mr. J.S. Arora, learned senior counsel for the petitioner submits that the daughter of original plaintiff is said to have executed a will in favour of the respondents but from the facts that the respondents are on litigating terms with the plaintiff and his daughter, the propounder of the will. Mother, the plaintiff is sole legal heir of the deceased Late Shaheeda Aameena Imam, the propounder of the will. The plaintiff executed deed of agreement to sale in the year 2003 and the deed of agreement for sale is to bind any successors and heirs executors and administrators on whom the property will devolve. The petitioner has already incurred huge expenses in pursuing the case as per the terms and condition of the agreement. It is further submitted that respondent no.1 in pursuance of the said forged and fabricated will executed an agreement for sale in favour of Harish Reddy, respondent no.4 and Harish Reddy illegally and forcefully entered into the possession of the suit property. Harish Reddy also filed intervener petition in the Title Suit for being impleaded as a party respondent in the suit. It is further submitted that respondent nos.1 and 2 have conspired and transferred the property in question to Harish Reddy only to usurp the property. Vide order dated 23.11.2011, Harish Reddy was made respondent no.1. After the death of Late Sayeida Mehendi Imam, the original plaintiff of the suit, Faiz Murtaza Ali



being legal heir of the original plaintiff was substituted in the place of original plaintiff. The substituted plaintiff also expressed his intention to honour the obligations under agreement for sale executed in favour of the petitioner and he also filed counter affidavit in the Hon'ble Supreme Court. The Attorney of the substituted plaintiff also admitted the facts of agreement for sale but during pendency of the suit, the substituted legal heir namely Faiz Murtuza Ali also died and the petitioner could not get in touch with the legal heir of plaintiff even after sincere effort and the petitioner apprehends danger of his interest at the hands of respondents, who in collusion with the legal heir of the plaintiff shall jeopardize the interest of the petitioner.

It is further submitted that the legal heir of substituted plaintiff and respondents filed petition for transposition in place of plaintiff Akabir Hussain filed petition for transposition in place of the plaintiff and against that order Sahnaz Ali, widow of Faiz Murtuza Ali, the substituted plaintiff filed C.W.J.C. No. 1480 of 2016 and this court set aside the order of transposition of defendant no.5 Syed Akabir Hussain as plaintiff and directed the court below to pass order in accordance with law. Now the legal heir of the original plaintiff has been substituted. Krishna Prasad Singh who had also filed petition under Order 1 Rule 10(2) of the



C.P.C. for being impleaded in the suit on the basis of claim that the original plaintiff namely Late Sayeida Mehendi Imam had executed a registered will in his favour on 24.11.1999 but he came to know about the registered will dated 24.11.1999 when the same was handed over to him by Faiz Murtuza Ali in June, 2013 but his petition for impleadment was also rejected by learned Sub-Judge. This court vide order dated 07.12.2017 passed in Civil Miscellaneous Jurisdiction No.1269 of 2016 allowed the petition of Krishna Chandra Prasad Singh @ Anil Kumar Singh and remanded the case to the court of learned Sub-Judge for consideration about the desirability of said Krishna Chandra Prasad Singh to be substituted in place of original plaintiff. It is submitted that learned Sub-Judge has committed jurisdictional error in rejecting the petition. Mr. J.S. Arora, learned senior counsel for the petitioner placed his reliance in support of his contention on the judgment of the Hon'ble Supreme Court in the case of ***Robin Ramjibhai Patel Vs. Anandibai Rama @ Rajaram Pawar and Others reported in (2017) SCCR 14.***

On the other hand Mr. Ganpati Trivedi, learned senior counsel appearing on behalf of the respondents submits that the petitioner has got no right to be impleaded in the suit as plaintiff. Late Sayeida Mehendi Imam filed suit for declaration of will



executed by her daughter Late Shamim Ameena Imam in favour of respondent no.1 and 2 as null and void and claimed right and title over the property of Late Shamim Ameena Imam. During the pendency of the present suit Sayeida Mehandi Imam, the original plaintiff is alleged to have executed a deed of agreement for sale in the year 2003. The deed of agreement for sale was not registered and the petitioner did not bring this fact to the notice of the court during the life time of the plaintiff or even at the time of substitution of Faiz Murtuza Ali as plaintiff after death of Late Sayeida Mehandi Imam. The petitioner filed petition only on 12.09.2014. Even on the basis of deed of agreement for sale the petitioner has got no right to be impeaded in the suit. The original plaintiff was space successions of the propounder of the will only if the will is found to be forged and fabricated and in that event the mother, original plaintiff of propounder of the will would succeed the property. During the pendency of that suit the petitioner in whose favour the original plaintiff is said to have executed an agreement for sale, which is not registered, has got no right to be impleaded as plaintiff of the suit because he has got only right of action against the plaintiff or his legal heir. In the suit the genuineness of the will executed by Sayeida Mehandi Imam is subject matter and the petitioner is not either legal heir of the



original plaintiff or necessary or proper party in the suit. It is further submitted that the case of Krishna Chandra Prasad Singh in whose favour Late Sayeida Mehandi Imam is said to have executed the deed of will in the year 1999 and other petition claiming the legal heir of Sayeida Mehandi Imam on remand considered by the learned Sub-Judge and found that in the suit only legal heir of original plaintiff is entitled to be substituted as plaintiff and non-else.

Mr. Ganpati Trivedi, learned senior counsel for the respondents in support of his contention has placed his reliance on the judgment of *Mumbai International Airport (P) Ltd. V. Regency Convention Centre & Hotels (P) Ltd reported in (2010) 7 Supreme Court Cases 417.*

On consideration of the submissions of both sides and on perusal of the records one and only question arises for consideration in this case is whether the petitioner who is said to have entered into an agreement for sale with Late Sayeida Mehandi Imam, the plaintiff of the suit for purchase of a piece of suit land is necessary or proper party to be impleaded in the suit in place of the plaintiff?

Admittedly, the plaintiff Late Sayeida Mehandi Imam filed present suit for declaration that the will said to have been



executed by her daughter Late Shamim Ameena Imam is forged and fabricated. In a suit for declaration of will as forged and fabricated the only point is whether the propounder of the will executed a will out of his free will and discretion without any coercion and only the genuineness of the will is to be tested. Admittedly, the petitioner on the basis of agreement for sale filed petition to be impleaded in the suit as plaintiff. Therefore, the question arises that whether the petitioner is a necessary or proper party in the suit for declaration of the will as forged and fabricated. The learned Sub-Judge held that by virtue of agreement for sale said to have been executed by original plaintiff, the petitioner is neither necessary nor proper party in the suit in which subject matter of genuineness of the will is under challenge. Once the suit of the plaintiff is allowed the petitioner has got only right of action to sue the plaintiff or his legal heir/representative for a direction to perform the part performance in pursuance of the agreement for sale but the presence of the petitioner in order to decide the genuineness of the will in my view is not at all required as the petitioner is neither a necessary or proper party. In the case of *Robin Ramjibhai Patel Vs. Anandibai Rama @ Rajaram Pawar and Others reported in (2017) SCCR 14*, the Hon'ble Supreme Court has held on the question of impleadment of subsequent



purchaser that it is privilege of the plaintiff as to what shall be scope of suit and who should be allowed to intervene as defendant- When plaintiff wants to implead certain persons as defendants on ground that they may be adversely affected by outcome of suit, then the interest of justice also requires allowing such a prayer for impleadment so that persons likely to be affected are aware of proceedings and may take appropriate defence as suited to their vendors. It is apparent from the fact of the aforesaid case that plaintiff had filed petition for impleadment of subsequent purchaser from the defendants and the plaintiff put forth the case that outcome of the suit may adversely affected right title and interest of proposed defendants but the court below had dismissed the petition of the plaintiff on such the Hon'ble Supreme Court held that it is the prerogative of the plaintiff about the scope of the suit and who should be the party defendant but in the present case the facts are quite otherwise and therefore, in my view the aforesaid judgment does not help the case of the petitioner. Even after remand, after setting aside the part order by Civil Miscellaneous Case No.1480/2016 preferred by Sahnaz Ali and Civil Miscellaneous Case No.1269 of 2016 preferred by Krishna Chandra Prasad Singh, it is held that only legal heirs be substituted in place of the plaintiff and accordingly inquiry was held by



learned Sub-Judge for substitution of the legal heir of original plaintiff, Late Sayeida Mehendi Imam and no legal heir of Faiz Murtuza Ali, who was earlier, substituted as plaintiff after death of Late Sayeida Mehendi Imam and Syed Akabir Hussain, who was transposed as plaintiff in the suit. Therefore, I find that learned Sub-Judge-XI, Patna has rightly dismissed the petition holding that the petitioner is not necessary or proper party in the suit.

Having considered the facts aforesaid, I do not find any jurisdictional error or illegality in the order impugned and accordingly, the civil miscellaneous petition is dismissed.

**(Prabhat Kumar Jha, J)**

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