

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.730 of 2016

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Md. Mansoor Alam @ Md. Mansur Alam, son of late Ahmad Hussain,
resident of vill-Harrakh, under Begusarai Municipal Ward No.7, P.O.
Suhirdnagar Pargana-Malki, P.S.-Town Begusarai, Anchal, Sub Division,
Sub Registry and District-Begusarai

.... Petitioner/s

Versus

Abu Kamal Alias Md. Gazi, son of Abdul Aziz, resident of village-Baro,
P.S.-Phulwaria, Sub Division Sub Registry-Teghra, District-Begusarai

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anirudh Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

4 21-03-2018 Heard both sides.

The petitioner filed this civil miscellaneous petition against the order dated 13.05.2016 passed in Title Suit No.273 of 2005 by which Sub Judge V, Begusarai impleaded the respondent, Abu Kamal @ Md.Gazi as defendant.

Learned counsel for the petitioner submits that the plaintiff filed suit for declaration that the land mentioned in Schedule II fell in the share of plaintiff on private partition among the legal heirs of Jumman Miyan. The respondent filed petition that he is the son of Sogra Khatoon and filed petition to be impleaded as respondent. The plaintiff being dominus litigis has choice of his own to file suit against a person seeking relief against him/her. The case of the plaintiff is that Jumman Miyan



got four sons and one daughter namely, Sogra Khatoon who died unmarried. The intervenor claimed the son of Sogra Khatoon but the plaintiff has stated that Sogra Khatoon died unmarried and denied the fact impliedly that Sogra Khatoon had an issue.

Therefore, I find that the learned Sub Judge has committed jurisdictional error in impleading the respondent as defendant-intervener in the suit.

Accordingly, this civil miscellaneous petition is allowed. The order dated 13.05.2016 is set aside. The respondent may file suit seeking share in the property of Jumman Miyan.

(Prabhat Kumar Jha, J)

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