

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.812 of 2018

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Pramod Kumar Gupta, S/o Late Babu Ram Gupta, resident of Mohalla -
Kawaliachak, P.S. - Tatarpur, District - Bhagalpur.

... .. Appellant/s

Versus

1. Partho Ghosh S/o Sri Vikash Kumar Ghosh resident of Muhalla - B, Ghosh Lane, Mahatma Gandhi Path, Bose Park, HPO - Bhagalpur.
2. Sri Brahma Kumar Gupta S/o Late Baburam Gupta
3. Sri Gunjan Gupta @ Manoj Kumar Gupta Both residents of Mohalla - Kajwaliachak, Pili Kothi, Tatarpur, Post - Bhagalpur City, P.S. - Tatarpur, District - Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Bauye Jee Jha, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 05-07-2018 Heard both sides.

Petitioner has filed this Civil Miscellaneous petition against the order dated 02.05.2018/03.05.2018 passed in Title Suit No. 272 of 2017 by which the petition of the petitioner filed under Order I rule 10(2) CPC read with Section 151 CPC has been dismissed.

During the pendency of this Civil Miscellaneous petition, the petitioner filed I.A. No. 422 of 2018 for stay of the Title Suit No. 272/2017.

Learned counsel for the petitioner submits that on the merit of this Civil Miscellaneous petition, the plaintiff filed suit for specific performance of contract against Sri Brahma Kumar



Gupta and others, stating therein that the defendants executed the deed of agreement to sale in favour of the plaintiff. During the pendency of the suit, petitioner being the co-sharer of Sri Brahma Kumar Gupta and others filed petition under Order I rule 10(2) of the CPC for impleading him as defendant, but the same has been dismissed on the ground that the petitioner is not a party of the deed of agreement. Learned counsel for the petitioner submits that the petitioner being co-sharer filed petition to implead him party but the petition has not been rejected on the ground that the petitioner is neither a necessary party nor a proper party and the petitioner is not a party of the deed of agreement to sale. Learned counsel for the petitioner has placed his reliance on a judgment of this court rendered in **Bhima Nand Jha vs. Sri Sri Panch Bhagini Sahit Tripur Sundari Daksh Kali & Ors.** Admittedly the plaintiff filed a title suit for specific performance of contract against the defendants. Petitioner is not a party to the deed of agreement. The case of the petitioner is that the partition suit is pending between the petitioner and the defendants in partition suit no. 204 of 2016. The plaintiff executed the deed of agreement to sale and, therefore, the petitioner being the co-sharer of the defendants are necessary party to the suit but I find no force in



the submission of the learned counsel for the petitioner on the sole ground that the suit is filed for specific performance of the contract and petitioner being not party to the agreement, is not a necessary party. If the defendants execute sale deed in pursuance of any judgment and decree passed in a suit for specific performance of contract, the same is not binding on the co-sharer of the defendants. Thus, I do not find any merit in this Civil Miscellaneous petition.

Accordingly, this Civil Miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

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