

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.861 of 2022

Shobhnath Tiwari S/o Late Yadunandan Tiwari R/o Village Parasiya, P.S. Bhabua, District Kaimur at Bhabua.

... .. Petitioner/s

Versus

1. Dayamuni Devi wife of late Rameshwar Pandey R/o village Barka Gau, P.S. Belaon, District Kaimur at Bhabua.
2. Hiramuni Tiwari wife of Mayamuni Tiwari R/o village Bhaluhari, P.S. Chand, District Kaimur at Bhabua.
3. Akhleshwar Tiwari son of Mayamun Tiwari R/o village Bhaluhari, P.S. Chand, District Kaimur at Bhabua.
4. Shri Makeswar Tiwari son of Mayamun Tiwari R/o village Bhaluhari, P.S. Chand, District Kaimur at Bhabua.
5. Shri Pritam Tiwari son of Mayamun Tiwari R/o village Bhaluhari, P.S. Chand, District Kaimur at Bhabua.
6. Lallan Tiwari son of late Jadunandan Tiwari resident of village Parasiya, P.S. Bhabua, District Kaimur at Bhabua.
7. Subhadra Devi wife of Anil Pandey resident of village Parasiya, P.S. Bhabua, District Kaimur at Bhabua.
8. Most. Gumta Kunwer wife of late Chandradev Tiwari resident of village Parasiya, P.S. Bhabua, District Kaimur at Bhabua.
9. Most Kiran Kunwer wife of late Jaichand Tiwari resident of village Parasiya, P.S. Bhabua, District Kaimur at Bhabua.
10. Ishwar Dayal Tiwari son of late Jaichand Tiwari resident of village Parasiya, P.S. Bhabua, District Kaimur at Bhabua.
11. Din Dayal Tiwari son of late Jaichand Tiwari resident of village Parasiya, P.S. Bhabua, District Kaimur at Bhabua.
12. Din Bandhu Tiwari son of late Jaichand Tiwari resident of village Parasiya, P.S. Bhabua, District Kaimur at Bhabua.
13. Urmila Devi wife of Badrai Tiwari resident of village Parasiya, P.S. Bhabua, District Kaimur at Bhabua.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Tribhuwan Narayan, Advocate.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

2 22-12-2022 Heard Mr. Tribhuwan Narayan, learned counsel for
the petitioner.



The petitioner/defendant is aggrieved by the order dated 18.3.2021, by which, the petition under Order I, Rule 10(2) of the Civil Procedure Code filed by the respondent No. 13 has been allowed.

Learned counsel for the petitioner assailing the impugned order submits that the respondent No. 13 has purchased the part of the suit property during pendency of the status-quo order dated 6.3.2014 by virtue of the sale deed dated 29.4.2015 bearing sale deed No. 2421 of 2015. He next submits that against the vendor of respondent No. 13, a Misc. Case was lodged by the petitioner bearing Misc. Case No. 8 of 2015, in which, the vendor of the respondent No. 13, i.e. defendant-2nd set has been punished for violation of the status-quo order. He next submits that the petitioner was not given opportunity and was not heard at the time of passing of the impugned order.

I have heard learned counsel for the petitioner.

Admittedly, the petitioner is defendant in the Partition Suit filed by the plaintiff/respondent No. 1 herein.

From perusal of the impugned order, it appears that both the parties were present in Court on the date of hearing of the petition filed by the respondent No. 13 under Order I Rule 10 (2) of the Code of Civil Procedure. It also transpires that the



Court has recorded appearance of both the parties and noted down that the parties were heard.

The respondent No. 13 has filed the petition on the basis of the fact that interest in the property devolved in his favour during pendency of the suit. The Order XXII, rule 10 CPC stipulates that in case of an assignment, creation, devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

From the facts of the case, it is admitted that the interest in the property has devolved in favour of the respondent No. 13 i.e. intervener/defendant. In the absence of intervenor/defendant, i.e. respondent No. 13, the Court cannot adjudicate and settle all the questions involved in the suit effectually and completely. The plaintiff, being the *dominus litis*, is not objecting the impleadment of the respondent no. 13 as defendant in the suit.

In view of the aforesaid discussion, I find no reason to interfere with the impugned order.

Accordingly, this application stands dismissed.

(Anil Kumar Sinha, J)

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