

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1088 of 2017**

Uma Kant Singh

... .. Petitioner/s

Versus

Shri Agendra Kumar Mishra @ Vinod Mani Mishra and Ors

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Chandra Kant

For the Respondent/s : Mr.Manish Chandra Gandhi

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

10 03-10-2023

Heard the parties.

2. This application has been filed on behalf of the petitioner for setting aside the order dated 12.04.2017 passed by learned Sub Judge, V, East Champaran at Bettiah in Title Suit No. 219 of 2008.

3. The Title Suit was filed by the plaintiffs and the plaintiffs had adduced their evidence. In the meantime the plaintiffs sold the suit property to the present petitioner. The petitioner has filed an application under Order 01 Rule 10 of the CPC which was heard on 22.02.2017 and the same was kept pending thereafter on 12.04.2017, the suit has been dismissed for default because the plaintiffs were not pursuing the suit.

4. The present application has been filed by the petitioner who had filed the intervention application which was



kept pending and it was never decided.

5. It has been contended by the petitioner that after his application for adding him as a party, the present suit has been dismissed. Though, after purchasing the suit property from the plaintiffs, the petitioner had stepped into the shoes of the plaintiffs and he was a necessary and proper party who should have been added in the suit.

6. Learned counsel for the defendants has appeared and he has submitted that the present dismissal order cannot be challenged by the petitioner who was not added as a party and the order is legally justified.

7. I have considered the submission of the parties.

8. The application under Order 1 Rule 10 of the petitioner should have been decided by the Court below particularly in the facts of the case when the entire suit property has been sold to the petitioner by the plaintiffs and thereafter the plaintiffs had lost interest meaning thereby that the plaintiffs are necessary and proper party in the present suit. Moreover, as has been pointed out by the learned counsel for the petitioner, the evidence of the plaintiff has already been concluded and the suit should not have been dismissed by the Court below.

9. In these circumstances, the application is allowed.



10. Accordingly, the order dated 12.04.2017 passed by learned Sub Judge, V, East Champaran at Bettiah in Title Suit No. 219 of 2008 is hereby quashed.

11. The trial Court is directed to decide the application dated 21.04.2014 within a month of receipt/communication of a copy of this order considering the facts as stated above and thereafter it will proceed in the suit in accordance with law.

(Sandeep Kumar, J)

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