

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.482 of 2021**

=====

Kumar Gaurav S/o Late Jagdish Prasad @ Jagdish Prasad Gupta. Resident of
Gaya Road, Bhadauni, Gondapur, P.S. and Distret - Nawada, Pin - 805110.

... .. Petitioner/s

Versus

1. The State of Bihar, through Collector Nawada.
2. The Circle Officer, Akbarpur, Anchal District- Nawada.
3. Krishna Prasad Bhojpuri S/o Late Gopal Prasad, Resident of Mohalla -
Mirzapur, Hatpar, Nawada, P.O. and P.S. and District- Nawada.
4. Vishwanath Prasad Bhojpuri S/o Late Gopal Prasad Resident of Mohalla -
Mirzapur, Hatpar, Nawada, P.O. and P.S. and District- Nawada.
5. Vidya Devi D/o Triveni Prasad Singh Resident of Village - Chhatihar, P.O. -
Hisua, District- Nawada.
6. Sushila Devi D/o Late Triveni Prasad Singh Resident of Village - Chhatihar,
P.O. - Hisua, District- Nawada.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Dubey, Advocate Mr. Kumar Gaurav, Advocate Mr. Shashank Kashyap, Advocate
For the Respondent/s	:	Mr. Mukul Prasad, AC to GP 18

=====

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 06-03-2024

Heard learned counsel for the parties.

2. This Court is intent to dispose of the present civil
miscellaneous petition at the admission itself.

3. The present petition has been filed under Article 227 of
the Constitution of India against the order dated 28.10.2021
passed by the learned Additional District Judge 12, Nawada in
Title Suit No. 27 of 2019 whereby petition dated 10.09.2019
filed by the petitioner under Order 1 Rule 10(2) C.P.C read with



section 151 of the Code of Civil Procedure (herein after referred to as 'the Code') was rejected.

4. Learned counsel for the petitioner submits that the petitioner is a purchaser from plaintiff respondent 2nd set who have disposed of all the properties and are no more interested in pursuing the title appeal. The suit was decreed in favour of the plaintiffs and the defendant State went into the appeal. The petitioner along with respondents 3rd set purchased all the suit property by way of a joint sale deed prior to passing of decree in the Title Suit No. 202 of 2013. Learned counsel further submits that after disposing of all the suit property, the plaintiff/respondents have lost interest in their case and they have not been pursuing the case seriously. The petitioner moved before learned 1st appellate Court and filed an application for his impleadment as one of the respondents which was rejected by the learned 1st appellate Court by a completely illegal order considering the provisions under Order XLI Rule 20 of the Code which is not applicable in the present case. Learned counsel submits that the said provision is applicable where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, has interest in the



result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent. Learned counsel further submits that the first appellate Court has missed the point that the present application has been filed under Order 1 Rule 10(2) of the Code. Under this provision the Court can implead any party at any stage even without an application if it thinks that his presence is necessary in order to effectively adjudicate the suit. Thus, the learned appellate Court misread the provisions and the impugned order is not sustainable.

5. The contention of the learned counsel for the petitioner is opposed by learned counsel appearing on behalf of the respondent Nos. 1 and 2. He submits that the petitioner is a purchaser *pendente lite* and his vendor is already on the record as respondent Nos. 3 and 4. In whatever manner the appeal is decided, the same would bind the respondents, and will similarly affect the position of the petitioner. Furthermore, the matter has proceeded to the appellate stage and unnecessary complication will arise if the impleadment of the petitioner is allowed at the appellate stage.

6. Having regard to the rival submissions and facts and circumstances of the case, I am of the considered opinion that as



the petitioner has been able to show to the Court that he would be seriously prejudiced in case he is not impleaded as a party, even at the appellate stage, such impleadment should be allowed. Admittedly, the petitioner is a purchaser *pendente lite*. He purchased the property just prior to passing of the judgment and decree. At the same time his vendor is already on the record as one of the respondents before the appellate Court. However, if the petitioner has reasonable apprehension that his vendor has lost interest in the case as he disposed of all the suit property, the petitioner has right to seek impleadment even at the appellate stage.

7. In the present case since the petitioner has been able to show his substantial interest in the adjudication of the matter and he is going to be directly affected by any decision of the appellate Court, it would be proper to allow impleadment of the petitioner in the case. In this regard reliance would be placed on the decision of the **Kasturi vs. Iyyamperumal and Ors.**, reported in, **(2005) 6 SCC 733 & Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors.**, reported in, **(2010) 7 SCC 417**. Moreover, the impugned order is palpably wrong on the point that the appellate Court has rejected the application of the petitioner, on



the ground that the petition was not proper under Order 41 Rule 20 of the Code. Order 41 Rule 20 reads as under :

“20. Power to adjourn hearing and direct persons appearing interested to be made respondents :

(1) Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.”

8. Obviously the same is not the case here as the petitioner was not a party before the learned trial Court. Therefore, the impugned order is not sustainable and hence the same is set aside and the petition is allowed at the stage of admission itself. The appellate Court is directed to implead the petitioner as a party respondent in the case and proceed with the matter.

9. It is also made clear that the petitioner will have only



those right which was available to his vendor. Being purchaser *pendente lite*, the petitioner is bound by the act of his vendor before the learned Trial Court and would not question the same in the appellate Court.

(Arun Kumar Jha, J)

Prakash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

