
(1996) 07 PAT CK 0002

In the Patna High Court

Case No : Civil Revision No. 1215 of 1995

Most. Saraswati Shaw and Others

APPELLANT

Vs

Umesh Prasad Gupta and Another

RESPONDENT

Date of Decision : 26-07-1996

Acts Referred:

Citation : (1996) 07 PAT CK 0002

Final Decision : Dismissed

Judgement

Dharmpal Sinha, J.—Heard learned Counsel for the Petitioners as also counsel for the opposite party No. 2.

2. In this revision petition the Petitioners, who are Defendants of Title Suit No. 43 of 1992, have questioned the legality of an order dated 19.5.1995 passed by the Sub-ordinate Judge 1st, Munger in that title suit, whereby he has allowed a petition, in which one Sarjug Prasad Sah, who is opposite party No. 2 in this revision petition has been allowed to be added as party, on the petition filed by him under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure.

3. Learned Advocate General appearing on behalf of the Petitioners has submitted that opposite party No. 2, who claims to be a purchaser of the suit property during the pendency of the suit, is neither necessary nor a proper party as has been held by a Division Bench of the Orissa High Court in the case of Pranakrushna and Others Vs. Umakanta Panda and Others, wherein it was observed (vide paragraph-8) as follows:

8... In my considered opinion, in a suit of this nature a transfer from the Defendant pendente lite is neither a necessary nor a proper party in as much as he would be bound by the decree in the suit in view of the principle contained in Section 52 of the T.P. Act....

4. On the other hand learned Counsel for the opposite No. 2 has pointed out that he had purchased the suit property when an ex parte decree was passed in the title suit and at the time of purchase the suit was not pending. According to him

the suit again became pending when ex parte decree was set aside in appeal filed by the Petitioners Defendants; but when the purchase had been made the suit was definitely not pending. So, it appears from his submission that the purchase had not been made by him during the pendency of the suit, which became restored after setting aside the ex parte decree by the appellate Court.

5. No doubt, the decision relied upon by the learned Advocate General appears to support the contention that a purchaser from the Defendant is not a necessary or proper party as has been held by the Orissa High Court but here is a peculiar case of addition of purchaser as Defendant. It appears that when there was an ex parte decree the original Plaintiff sold the suit property, and the suit that stood disposed of and since the original Plaintiff has sold the property, he may not have any interest in prosecuting the suit. The vitally interested persons, who has purchased the suit property, is now opposite party No. 2 who has been allowed by the impugned order to be added as party.

6. In the facts and circumstances of the case, I do not think that the impugned order requires any interference and it cannot, be said that the learned Court below in passing, the impugned order has committed any illegality or material irregularity in exercise of revisional jurisdiction.

7. So, in this view of the matter, I find no merit in this revision petition and it is, accordingly, dismissed in limine.