

VIJAY PRATAP AND ORS  
v.  
SAMBHU SARAN SINHA AND ORS.

JULY 30, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Code of Civil Procedure, 1908 :*

*Order 1, Rule 10—Parties to suit—Suit for specific performance—Petitioner's father alleged to have entered into compromise and requested for deletion of his name from the arraignment of parties in the suit—Order of deletion made after his death pending suit before compromise memo was recorded—Application by petitioners seeking to come on record as necessary parties—Trial court rejected application—High Court upheld the order—It was contended before this Court that the deed of relinquishment alleged to have been signed by petitioners' father was not genuine—Held, courts below were right in holding that petitioners were not necessary and proper parties to the suit for specific performance—If petitioners have got any remedy it is open to them to avail the same according to law.*

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)  
No. 13593 of 1996.

From the Judgment and Order dated 22.2.96 of the Patna High Court  
in C.R. No. 2054 of 1993.

S.B. Sanyal, R.P. Wadhvani and Rudreshwar for the Petitioners.

The following Order of the Court was delivered :

This petition is against an order dismissing the application under Order 1, Rule 10, CPC filed by the petitioners to come on record in place of their father. The suit was laid for specific performance wherein the father during his life time is alleged to have entered into compromise and requested to delete his name from the arraignment of the parties as respondent No. 1. The deletion of the first respondent came to be made after his demise. Pending suit before compromise memo was recorded, the petitioners sought to come on record under Order 1, Rule 10 being that they were necessary and proper parties. The trial Court recorded the

A finding that deletion had taken place and observed as under :

- B "At present I am not giving any finding with respect of Ext-6 and compromise petition in the light of an objections raised by petitioners in their other two petitions. Simply I have stated the facts which are available on record. If these petitioners are made parties in the suit as prayed then dispute will arise between petitioners and plaintiff No. 1 with respect of compromise and Ext-6. Its result will be that there will be dispute between the co-plaintiffs with respect of their right, title and interest in suit property. This suit will turn into a regular title suit. To decide right, title and interest of co-plaintiffs in suit property is beyond the scope of this suit. Suit of Specific performance of contract can't be turned into a regular Title Suit. So in my opinion these petitioners are not necessary and proper parties under Order 1 Rule 10 C.P.C.
- D The trial Court accordingly held that the petitioners are neither necessary nor proper parties to the suit. On revision, the High Court upheld the same. Shri Sanyal, the learned counsel for the petitioners contended that their father had not signed the relinquishment deed and the signatures appended to it were not that of him. The deed of relinquishment said to have been signed by the father of the petitioners was not
- E genuine. These questions are matters to be taken into consideration in the suit before the relinquishment deed and compromise memo between the other contesting respondents were acted upon and cannot be done in the absence of the petitioners. The share of the petitioners will be effected and, therefore it would prejudice their right, title and interest in the property.
- F We cannot go into these questions at this stage. The trial Court has rightly pointed that the petitioners are necessary and proper parties so long as the alleged relinquishment deed said to have been signed by the deceased father of the petitioners is on record. It may not bind petitioners but whether it is true or valid or binding on them all questions which in the present suit cannot be gone into. Under those Circumstances, the courts
- G below were right in holding that the petitioners are not necessary and proper parties but the remedy is elsewhere. If the petitioners have got any remedy its open to them to avail of the same according to law.

The special leave petition is dismissed.

R.P.

Petition dismissed.