IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.97 of 2018

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Mahesh Sharma S/o late Dhurkheli Rai @ Dhurkheli Sharma Resident of Village- Kiratpur Gurudas @Khabra, P.S. Sadar, Distt. Muzaffarpur.

... ... Petitioner/s

Versus

1. Bhairo Rai, S/o late Dhurkheli Rai Resident of Village- Kiratpur Gurudas @Khabra, P.S. Sadar, Distt. Muzaffarpur.
2. Bindo Kumar S/o late Dhurkheli Rai @ Dhurkheli Sharma
3. Ashish Kumar S/o Sri Binod Kumar both Resident of Village- Kiratpur Gurudas @Khabra, P.S. Sadar, Distt. Muzaffarpur.
4. Madhav Sharma
5. Udhav Kumar Sharma Both Son of Sri Mahesh Sharma
6. Smt. Neelam Sharma W/o Sri Mahesh Sharma

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Anjani Kumar, Sr. Adv.
Mr.Deepak Sahay Jamuar
For the Respondent/s : Mr. Manoj Kumar Manoj

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
C.A.V.

Date : 22-09-2022

The petitioner, who is the plaintiff no. 1 in Title Suit No. 1367 of 2014, has challenged the order, dated 15.06.2017, passed by the learned Sub Judge-XIII, Muzaffarpur, whereby the intervention petition filed by the respondent no. 1, who is the own brother of the petitioner-plaintiff, has been allowed and he has been impleaded as party-defendant in the suit.

2. The petitioner, along with his sons and wife, being plaintiff nos. 1 to 4, filed Title Suit No. 1367 of 2014, in which

another brother of the petitioner-plaintiff no. 1, Binod Kumar and his son, Ashish Kumar, were made defendants. The said suit has been filed for declaration of title of the plaintiffs upon Schedule-I land, described in the plaint and for confirmation of possession over the said Schedule-I land, *inter alia,* on the facts that the petitioner-plaintiff no. 1 and the defendant no. 1-respondent no. 2 are the sons of Late Dhurkheli Rai and both brothers are separate in mess and business and their another brother, Bhairo Rai, intervenor petitioner-respondent no. 1 has no concern with the cultivation or business of the other two brothers.

3. The plaintiff no. 4-respondent no. 6 purchased land of C. S. Khata No. 162, C. S. Plot No. 89 and C. S. Khata No. 212, C. S. Plot No. 88, corresponding to R. S. Khata No. 314, R. S. Plot No. 1087M, having an area of 360 sq. ft., equivalent to 04 dhurs, from one Binda Sah, son of Shiv Sah, through registered sale deed, dated 24.06.1985 and since the date of purchase, the aforesaid land has come in peaceful possession of the plaintiff no. 4-respondent no. 6, namely, Neelam Sharma, i.e. the wife of the petitioner-plaintiff no. 1. The defendant no. 1-respondent no. 2 and Dhurkheli Rai, father of the plaintiff no. 1 and defendant no. 1, jointly purchased the land of C. S. Khata Nos. 162 and 212, C. S. Plot Nos. 88 and 89, corresponding to R. S. Khata No. 314, R. S.

Plot No. 1078M, having an area of 580.6 sq. ft., equivalent to 6½ dhurs from Binda Sah, son of Late Shiv Sah, through registered sale deed, dated 2406.1985. After the aforesaid purchase, Dhurkheli Rai, father of plaintiff no. 1 and defendant no. 1 sold an area of 180.3 sq. ft., equivalent to 02 dhurs, of R. S. Khata No. 314, R. S. Plot No. 1078M, to defendant no. 1, through sale deed no. 15422, dated 07.09.1987. Again, vide registered sale deed, dated 07.09.1987, said Dhurkheli Rai, i.e. father of the plaintiff no. 1, defendant no. 1 and intervenor petitioner sold the land of R. S. Khata No. 314, R. S. Plot No. 1078M, having an area of 110.3 sq. ft, equivalent to 1¼ dhurs, which was purchased through sale deed, dated 24.06.1985, in favour of plaintiff no. 4-respondent no. 6, Neelam Sharma.

4. The petitioner-plaintiff no. 1 and defendant no. 1-respondent no. 2 purchased the lands of R. S. Khata No. 314, R. S. Plot No. 1078M, having an area of 10 dhurs, through registered sale deed, dated 14.06.1991 from one Kameshwar Prasad Sah, son of Late Binda Sah, to the extent of half and half. The petitioner-plaintiff no. 1 purchased, in the name of his minor sons, plaintiff nos. 2 and 3-respondent nos. 4 and 5 to the extent of 2/3rd area and defendant no. 2-respondent no. 2 purchased the land in the name of his minor son, defendant no. 2-respondent no. 3 to the extent of

1/3rd area of R. S. Khata No. 314, R. S. Plot No. 1078M, having an area of 1.4 decimals, equivalent to 07 dhurs, vide registered sale deed, dated 18.10.2002, from Kameshwar Prasad Sah, son of Binda Sah. The land purchased by defendant no. 1-respondent no. 2 in the name of defendant no. 2-respondent no. 3 has been described in Schedule-II of the plaint; whereas the land purchased by the petitioner-plaintiff no. 1 in the name of plaintiff nos. 2 and 3-respondent nos. 4 and 5 has been described in Schedule-I of the plaint and the plaintiffs have sought for a declaration that the defendants have got no concern with the Schedule-I land mentioned in the plaint and the plaintiffs have got no concern with the Schedule-II land, mentioned in the plaint.

5. The respondent no. 1-intervenor petitioner claiming himself as brother of plaintiff no. 1 and defendant no. 1 and the son of Late Dhurkheli Rai filed a petition for his impleadment in the suit as defendant, *inter alia,* stating that Dhurkheli Rai, his father, died in the year 1994 and his mother, Ram Pyari Devi also died in the year 2009, leaving behind three sons, namely, Bhairo Rai (respondent no. 1-intervenor petitioner), Mahesh Sharma (plaintiff no. 1-petitioner) and Binod Kumar (defendant no. 1-respondent no. 2). Dhurkheli Rai died in jointness with his sons and jointly purchased the land of R. S. Khata No. 314, R. S. Plot

No. 1078M, in his name and also in the name of defendant no. 1-respondent no. 2 and plaintiff no. 4-respondent no. 6, through two sale deeds, dated 24.06.1985 from one Binda Sah and came in possession over the land jointly. His father, Dhurkheli Rai also purchased some land in the name of his wife and on the death of Dhurkheli Rai and his wife, the aforesaid land, i.e. R. S. Khata No. 314, R. S. Plot No. 1078M came in possession of the plaintiff no. 1 and defendant no. 1, including the intervenor petitioner-respondent no. 1. The land purchased in the name of plaintiff no. 4-respondent no. 6 and defendant no. 1-respondent no. 2 was for the purpose of private *rasta* and approach road for egress and ingress from their houses. Accordingly, the same has continuously been used by the parties jointly. The plaintiffs and the defendants have not impleaded the intervenor petitioner as party in the suit with mala fide intention inasmuch as the respondent no. 1-intervenor petitioner is having right, title and interest upon the said land of R. S. Khata No. 314, R. S. Plot No. 1078M, as such he is a necessary party in the suit.

6. The learned Trial Court, by the impugned order, dated 15.06.2017, has allowed the intervention petition filed by the respondent no. 1, under Order 1 Rule 10 (2) of the Code of Civil Procedure and accordingly the respondent no. 1 has been

impleaded as party-defendant in the suit and he has already filed his written statement -cum- counter claim in the suit.

7. Learned Senior Counsel for the petitioner, assailing the impugned order, submits that respondent no. 1 is neither a necessary party nor a proper party in the suit inasmuch as the land involved in the suit was either purchased in the name of the wife of the petitioner-plaintiff no. 1, his late father, sons and in the name of the defendant and his son, as such, the lands are not joint family property; rather, the same is purchased property by the plaintiffs and the defendants. There is no question of any interest and/or share in the suit land of the respondent no. 1-intervenor petitioner.

8. He further submits that way back on 29.01.1988, in a family arrangement, respondent no. 1, respondent no. 2 and this petitioner had separated themselves during the life time of their father and mother and had also partitioned their houses and other properties. The properties involved in the suit are not joint family property and the joint family properties have already been partitioned among all the three brothers and if the intervenor petitioner-respondent no. 1 has any grievance with regard to his right, title and interest over the suit property, that gives rise to a separate cause of action. Accordingly, the learned Court below has

erroneously allowed the respondent no. 1 to be added as party-defendant no. 3 in the suit. He further submits that the plaintiff no. 1-petition is *dominus litis* and has right to choose the persons against whom he wishes to litigate and he cannot be compelled to sue a person against whom he does not seek any relief.

9. In support of his argument, learned Senior Counsel has placed reliance on the decisions of the Supreme Court, in the cases of **Mumbai International Airport Limited v. Regency Convention Centre and Hotels Private Limited and Others**, reported in **(2010) 7 SCC 417** and **Vidur Impex and Traders Private Limited and Others v. Tosh Apartments Private Limited and Others**, reported in **(2012) 8 SCC 384**.

10. The Supreme Court, in paragraph 13 of **Mumbai International Airport Limited** (supra), has held as follows:

> "**13.** The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ("the Code", for short), which provides for

impleadment of proper or necessary parties. The said sub-rule is extracted below:

> "10. (2) *Court may strike out or add parties*.—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

11. The Supreme Court, in **Mumbai International Airport Limited** (supra), has explained the provision of Order I Rule 10 (2) of the Code of Civil Procedure and has held that the Court may, at any stage of the proceedings, either upon or even without any application, and on such terms as may appear to it to be just, direct that any person can be added as a party who also have joined as plaintiff or defendant, but not added, or any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. The Court has given the discretion to add as a party, any person who is found to be a

necessary party or proper party. [See, paragraph 14 of **Mumbai International Airport Limited** (supra)].

12. The Supreme Court, in paragraph 41 of **Vidur Impex and Traders Private Limited** (supra), has laid down the broad principle, which will govern the disposal of an application for impleadment and in paragraph 43, the Supreme Court, while affirming the order of the Delhi High Court, has held that seven-years delay in filing the application for impleadment constitute a valid ground for declining the prayer for impleadment as party in the suit.

13. On the other hand, learned Counsel appearing on behalf of respondent no. 1 submits that the petitioner-plaintiff no. 1 as well as respondent no. 2-defendant no. 1 filed a collusive suit for declaration of their exclusive title over the suit land, including the land situated at R. S. Plot No. 1078M, which was purchased from the joint fund of the joint family for the purpose of private rasta for egress and ingress from their houses and accordingly, all the parties have been utilizing the said rasta since the date of its purchase. His father, Dhurkheli Rai died in jointness with his sons and the lands were jointly purchased being R. S. Plot No. 1078M, in R. S. Khata No. 314 in his name and in the name of respondent no. 2-defendant no. 1, measuring n area of 580.6 sq. ft. by sale

deed, dated 24.06.1985, further in the name of plaintiff no. 4-respondent no. 6 through sale deed, dated 24.06.1985 from one Binda Sah and all the parties came in peaceful possession over the said land jointly. He pointed out the sketch map, which has been annexed along with the counter affidavit -cum- counter claim in order to show that the passage is situated over Plot Nos. 1078M, 1079, 1081, which connects their house with the N. H. 28. He further submits that there was amicable partition on 29.01.1988 between Dhurkheli Rai and his three sons, namely, Bhairo Rai, Mahesh Sharma and Binod Kumar in respect of their residential houses only, situated over R. S. Plot Nos. 1075, 1081P and 1072P, in which respondent no. 2-defendant no. 1 has got from east, plaintiff no. 1 has got from west and respondent no. 1 has got from middle. He further submits that only residential house has been partitioned and other properties including their agricultural land are yet to be partitioned. In the north from the house, there is a passage for egress and ingress of all the three brothers and their father and mother were living with all the brothers and there is also a passage over R. S. Plot No. 1081 and 1075 for egress and ingress from north, which is ancestral land and connecting the said passage to approach N. H. 28 in the R. S. Plot No. 1078, purchased by Late Dhurkheli Rai, through two sale deeds, dated

24.06.1985/25.06.1985, in R. S. Plot No. 1079, which Dhurkheli Rai purchased in the name of his wife, Ram Pyare Devi. Late Dhurkheli Rai, i.e. father of the respondent no. 1 and his sons had no passage to approach N. H. 28 from their aforesaid house, so said Dhurkheli Rai purchased1.5 decimals of land of R. S. Plot no. 1079 in the year 1979 in the name of his wife, 360 sq. ft. in the name of plaintiff no. 4-respondent no. 6 in the year 1985 and 6.5 dhurs, equivalent to 580.6 sq. fit of R. S. Plot No. 1078M in his own name and in the name of defendant no. 1-respondent no. 2 jointly in the year 1985 for the purpose of egress and ingress.

14. Since the respondent no. 1-intervenor petitioner was posted outside, as such, his name could not be mentioned in the aforesaid sale deed. The property was purchased by his father, when respondent no. 1 was at his workplace, the petitioner and respondent no. 2 by impersonating his father got executed the sale deed, dated 07.09.1987, when his father had suffered paralysis stroke.

15. The respondent no. 1-intervenor petitioner has filed written statement -cum- counter claim in the said suit also for a declaration that sale deed no. 15422, dated 07.09.1987, alleged to be executed by late Dhurkheli Rai in favour of respondent no. 2-defendant no. 1 and sale deed no. 15421, dated 07.09.1987

executed in the name of plaintiff no. 4-respondent no. 6 is fraudulent, illegal, inoperative, collusive, without consideration and not binding upon the respondent no. 1-intervenor petitioner. It has further been prayed in the counter claim for declaring right of the respondent no. 1-intervenor petitioner to utilize the passage over R.S. Plot Nos. 1075, 1078, 1079 and 1081.

16. In support of his submission, learned Counsel relies on the decision of Punjab and Haryana High Court, in the case of **Krishan Lal and Another v. Sudesh Kumari and Others (AIR 1998 P & H 168)**. He also relies on the decision of Allahabad High Court, in the case of **Committee of Management, Ratan Muni Jain Inter College and Another v. III Additional Civil Judge, Agra and Others (AIR 1995 ALL 7)**. He next relied on the decision of the Supreme Court, in the case of **Aliji Momonji and Co. v. Lalji Mavji and Others**, reported in **(1996) 5 SCC 379**.

17. In the case of **Krishan Lal** (supra), the Punjab and Haryana High Court, in paragraph 17, has held that "*In these circumstances and especially then the applicant has taken the plea of the sale-deed being forged and fabricated document, his interests are bound to be affected prejudicially and to his detriment, which obviously would be at his back if he is not impleaded as a party. The Court would have to give a finding on*

the issue whether the plaintiff is the sole owner of the property as claimed, and is entitled to possession of the portions of the property, subject matter of both the suits, to the exclusion of all others."

18. The Punjab and Haryana High Court has held in paragraph 18 of **Krishan Lal** (supra) as under:

> **18.** It does not stand to reason that such determinations should be permitted to be concluded at the back of the applicant petitioner. Further-more, to require the same parties to file different suits and proceedings in relation to the same property, based on the same documents, would neither be in the interest of justice nor would be proper. Avoidance of multiplicity and unnecessary expenses is a relevant factor, which needs to be considered by the Courts concerned. Here it would be relevant to refer to the following observations of a Division Bench of this Court in *Chandigarh Housing Board* v. *K.K. Kalsi*, 1996 (2) All Instant Judgments 554, as under:
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> "The purpose of determining the dispute between the parties is primarily to attach finality to their disputes and not to determine partial dispute and relegate the parties to different legal forums for determination."

19. The Allahabad High Court, in the case of Committee of Management (supra), has held that *"The theory of dominus litus*

should not be over-stretched because it is the duty of the court to ensure that if for deciding the real matter in dispute, a person is necessary party, the court can order such person to be impleaded. Merely because the plaintiff does not choose to implead a person, is not sufficient for rejection of an application for being impleaded. The provisions of Order 1, Rule 10(2), C.P.C. are very wide and the powers of the court are equally extensive. Even without an application to be impleaded as a party, the court may at any stage of the proceedings order that the name of any party, who ought to have been joined whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added".

20. The Supreme Court, in the case of **Aliji Momonji** (supra) has held that where the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is sought, he is a proper party.

21. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

22. It is not in dispute among the parties that the plaintiff no. 1, defendant no. 1 and the intervenor petitioner are own

brothers and their joint residential house have been partitioned among themselves by family arrangement on 19.01.1988, during the lifetime of their father. The respondent no. 1 has contended that only residential house has been partitioned and other properties, including their agricultural land, are yet to be partitioned amongst them.

23. The case of the petitioner along with respondent no. 2 is that the sale deeds were exclusively executed in the name of plaintiff no. 4-respondent no. 6, in the name of their father, Dhurkheli Rai, along with respondent no. 2-defendant no. 1, and other family members and none of the sale deeds belong to the intervenor petitioner-respondent no. 1; whereas the contention of respondent no. 1-intervenor petitioner is that the disputed land was purchased through various sale deeds from joint family fund while the respondent no. 1 was posted outside the village in connection with his job, for the purpose of passage/egress and ingress to their joint house, which got partitioned through family arrangement and the said passage is being used by all the brothers and family members jointly since the date of purchase and the same is connecting their house with N. H. 28.

24. It has also been contended by respondent no. 1 that the sale deeds executed in favour of plaintiff no. 4-respondent no.

6, his brother (defendant no. 1-respondent no. 2) are fraudulent, illegal, inoperative, collusive, without consideration and not binding upon the respondent no. 1-intervenor petitioner.

25. There is no dispute that the petitioner, intervenor petitioner and respondent no. 2 are own brothers and were co-sharer of the joint properties, along with their father, which, according to one party, was partitioned during the lifetime of their father, but, according to intervenor petitioner, only house was partitioned and other properties purchased from the joint fund were not partitioned and were bing used jointly for the benefit of all the parties. There appears to be direct dispute between the brothers in regard to the suit land while plaintiffs rest their claim on the basis of the fact that the properties were purchased in the name of plaintiff no. 4, respondent no. 2 and his sons etc; whereas the contention of the respondent no. 1-intervenor petitioner is that the sale deeds executed by his father Dhurkheli Rai in favour of respondent no. 2-defendant no. 1 and plaintiff no. 4 are fraudulent, illegal, inoperative, collusive, without consideration and not binding upon him. It is the clear case of respondent no. 1 that these lands were purchased from the joint fund and for the purpose of passage/egress and ingress, connecting their house to N. H. 28.

26. In the case of **Ramesh Hira Chand Kunda Mal v. Municipal Corporation of Greater Bombay**, reported in **(1992) 2 SCC 524**, the Supreme Court made a distinction between direct interest, legal interest and commercial interest and quoting the case of *Razia Begum* in paragraph10 of this judgment, it has been held that a person may be added as party to the suit, he should have interest in the subject matter of litigation whether it be a question relating to movable or immovable property. The same paragraph is hereby quoted for ready reference:-

> "10. The power of the Court to add parties under Order I Rule 10, CPC, came up for consideration before this Court in Razia Begum (AIR 1958 SC 886). In that case it was pointed out that the Courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the Court and that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject-matter of the litigation whether it be the questions relating to moveable or Immovable property."

27. In paragraph-14 of the said judgment, the Supreme Court has laid down the true test for addition of parties which is as follows:-

"14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.

The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e. , he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.

Similar provision was considered in **Amon v. Raphael Tuck & Sons Ltd. (1956) 1 All E.R. 273**, wherein after quoting the observations of Wynn-Parry, J. in **Dollfus Mieg et Compagnie S.A. v. Bank of England (1950) 2 All E.R. 611**, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:

> The test is 'May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights.'"

28. In views of the aforesaid discussion, based on the facts as well as law, it is clear that respondent no. 1-intervenor petitioner has taken a specific plea that the sale deeds executed by his father in favour of plaintiff no. 4 and defendant no. 1 are forged and fabricated documents and the lands involved in those sale deeds were purchased jointly by the father from the joint fund for the purpose of passage, definitely the interest of the respondent no. 1-intervenor petitioner is bound to be affected prejudicially if he is not allowed to be added as party-defendant in the suit, since the petitioner-plaintiff no. 1 has sought a declaration in the suit as well as defendants are exclusive owners of the properties involved

in the sale deeds/suit land to the exclusion of others will affect the legal right, which respondent no. 1-intervenor petitioner has claimed over the suit land.

29. In **Ramesh Hira Chand Kunda Mal** (supra), the Supreme Court has held that the only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. A line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest.

30. If the contention of the petitioner is accepted and the respondent no. 1-intervenor petitioner is not permitted to be added as party-defendant in the suit, in that case, the respondent no. 1-intervenor respondent would require to file separate suit and proceeding in relation to same property upon which he has claimed his legal right, based upon the same documents, this would neither be in the interest of justice nor would be proper. Avoidance of multiplicity and unnecessary expenses is also a factor, which needs to be considered by the concerned court. If the respondent no. 1-intervenor petitioner is allowed to be added as party-defendant, the dispute between the parties will attain finality and the court would

be able to effectively and completely decide the dispute between the parties and can pass an effective decree or grant relief to either parties taking into consideration the facts and circumstances of the case.

31. For the reasons discussed herein before, I am of the considered opinion that in absence of respondent no. 1-intervenor petitioner, the dispute pending before the Court in the suit filed by the petitioner-plaintiff no. 1 cannot be effectively and completely decided and no prejudice shall be caused to the petitioner-plaintiff no. 1.

32. Accordingly, I do not find material irregularity and/or jurisdictional error in the order impugned.

33. This application is, accordingly, dismissed.

34. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	31-08-2022
Uploading Date	22-09-2022
Transmission Date	N/A