



THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extraordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 05 of 2023

Ms. Chumden Nangpa,
D/o Late Langchen Pipon
Aged about 70 years,
Resident of Tholung House,
Mangan Bazar, North Sikkim,
Pin Code. 737116.

..... Petitioner/Plaintiff

Versus

1. Tenzing Yapshi Yuthok,
S/o Late Tenzing Gyurmey Yuthok,
R/o Bojoghari, Gangtok, P.O. Gangtok,
Presently at Ranipool, Sikkim
Pin Code: 737 102.
2. District Collector-cum-Registrar,
Office of the District Collectorate,
District Administrative Centre,
Sichey, Gangtok Sikkim,
Pin Code _ 737 101.

.....Respondents/Defendants

Petition under Article 226 and 227 of the Constitution of India.

For quashing impugned order dated 14.11.2022 passed by the learned Civil Judge, Gangtok in Title Suit Case No. 10 of 2021; whereby an application under Order 1, Rule 10(2) read with section 151 of the Code of Civil Procedure, 1908 filed by the respondent no.1. was allowed.

Appearance:

Mr. Dewen Sharma Luitel, Mr. Mohan Sharma and Mr. Bhaichung Bhutia, Advocates for the Petitioner/Plaintiff.

Mr. Manish Kumar Jain, Advocate for Respondent/Defendant no.1.

Mr. Thinlay Dorjee Bhutia and Mr. Yadev Sharma, Government Advocates for Respondent/Defendant no. 2.



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Chumden Nangpa vs. Tenzing Yapshi Yuthok & Anr.
With
W.P. (C) No. 06 of 2023
Chumden Nangpa vs. Tenzing Yapshi Yuthok & Anr.

With

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..Respondents/Defendants

Petition under Article 226 and 227 of the Constitution of India.

For quashing impugned order dated 14.11.2022 passed by the learned Civil Judge, Gangtok in Title Suit Case No. 09 of 2021; whereby an application under Order 1, Rule 10(2) read with section 151 of the Code of Civil Procedure, 1908 filed by the respondent no.1. was allowed.

Appearance:

Mr. Dewen Sharma Luitel, Mr. Mohan Sharma and Mr. Bhaichung Bhutia, Advocates for the Petitioner/Plaintiff.

Mr. Manish Kumar Jain, Advocate for Respondent/Defendant no.1.

Mr. Thinlay Dorjee Bhutia and Mr. Yadev Sharma, Government Advocates for Respondent/Defendant no. 2.



Date of hearing : 06.07.2023

Date of Judgment : 04.08.2023

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. This judgment shall dispose two writ petitions identical in nature and between the same parties.

2. In both the writ petitions the petitioner (the plaintiff) challenges an order dated 14.11.2022 allowing the application for impleading subsequent transferees and a lessee filed by the respondent no.1 (defendant no.1).

3. In both the proceedings the plaintiff had filed a suit against the defendant no.1 alleging that he had misused the trust reposed on him by the plaintiff as he was her grand niece's husband; made her sign on blank papers on the pretext of helping her get compensation for construction of road on her land; preparing false power of attorney dated 20.07.2016 (power of attorney) and gift deed dated 22.01.2019 (gift deed) and sale deed dated 25.04.2016 (sale deed) respectively and disposing of her property.

4. In the proceeding relating to Writ Petition (C) No. 05 of 2023 the suit sought for declaration and cancellation of the registration of the gift deed and the power of attorney as



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being false, forged and illegal documents. In addition it also sought for correction of land records and re-mutation of the suit property in favour of the plaintiff. The plaint described the suit property as plot no. 299 measuring an area of 0.1423 hectares under Block Nandok, Ranipool, East Sikkim.

5. In the proceeding relating to Writ Petition (C) No. 06 of 2023 the suit sought for declaration and cancellation of sale deed and the power of attorney as being false, forged and illegal documents. In addition it also sought for correction of land records and re-mutation of the suit property in favour of the plaintiff. The plaint described the suit property as plot no. 299/P measuring an area of 0.2340 hectares under Block Nandok, Ranipool, East Sikkim.

6. However, in both the plaints there is a Caveat. The plaintiff asserts that due to non-supply of documents pertaining to the illegal transaction of the suit land she is not in a position to give appropriate schedule of the suit land and thus seeks leave to amend the same as and when she receives the certified copies of the documents.

7. A perusal of the power of attorney reflects *prima facie*, that the plaintiff has constituted the defendant no.1 as an attorney to do various acts on her behalf in respect of her



various landed properties including plot no.299. The gift deed involved in Writ Petition (C) No. 05 of 2023 and the sale deed involved in Writ Petition (C) No. 06 of 2023 are purported to be between the plaintiff and the defendant no.1. All these documents are alleged to be false by the plaintiff and contested to be genuine by the defendant no.1.

8. The defendant no.1 has filed his written statements in which he has taken the stand that all these transactions were made on the instructions of the plaintiff and she was fully aware about it.

9. The defendant no.1 also filed two applications under Order I Rule 10 of the CPC in both the proceedings seeking addition of additional parties on the ground that pursuant to the execution of power of attorney the land was sold to them and the suit premises are not in his possession. The plaintiff filed the reply to the said applications objecting to the impleadment. The learned Civil Judge allowed the applications filed by the defendant no.1 on the ground that the cancellation of the power of attorney would affect the parties sought to be impleaded by the defendant no.1.

10. The impugned Orders are under challenge by the plaintiff primarily on the ground that as she was the *dominus litis* nobody else besides the ones she has chosen



to sue can be permitted to be impleaded as defendants against the wish of the plaintiff.

11. In *Sudhamayee Pattnaik & Ors. Vs. Bibhu Prasad Sahoo & Ors.*¹ the Supreme Court examined a case in which the High Court had allowed the impleadment of subsequent purchasers who as alleged by the defendant nos. 1 to 4 had purchased some parcels of the disputed land sold to them by the plaintiff during the pendency of the suit. The application under Order I Rule 10 CPC was filed by the original defendant nos. 1 to 4 in a suit instituted by the plaintiffs against them. The suit was for declaration, permanent injunction and recovery of possession. The original defendants had appeared and filed their join written statement along with counter claim for declaration of their right, title and interest over the suit property and for permanent injunction. After the plaintiff's evidence was closed, original defendant nos. 1 to 4 filed the application under Order I Rule 10 CPC and prayed for impleadment of subsequent purchasers alleging inter alia that during the pendency of the suit, the plaintiffs have illegally and unlawfully alienated some parcels of the disputed land in favour of three other persons. It was

¹ 2022 SCC OnLine SC 1234



therefore, prayed to implead the subsequent purchasers as party defendants. The application under Order I Rule 10 CPC was opposed by the plaintiffs on the ground that defendant nos. 1 to 4 did not have the *locus standi* to file the application and that the plaintiffs were the *dominus litis* and nobody could be permitted to be impleaded as defendants against the wish of the plaintiffs. In such circumstances the Supreme Court held that the plaintiff is the *dominus litis* and unless the court *suo moto* directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order I Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Considering the fact that the defendants had also filed a counter claim for declaration of their rights, title and interest over the suit property and permanent injunction it was held by the Supreme Court that not impleading the subsequent purchasers as defendants on the objection raised by the plaintiff shall be at the risk of the plaintiffs.

12. The facts in ***Sudhamayee Pattnaik*** (supra) are different from the facts in the present proceedings. The present proceeding also involves a power of attorney through which many of the subsequent transactions and transfers of property have taken place. The petitioner seeks



the cancellation of power of attorney, declaration that she is the absolute owner of the suit property and for correction of land records and re-mutation as well. The cancellation of the power of attorney would affect all the transactions made pursuant to the power of attorney. The declaration that the plaintiff is the absolute owner of the suit property i.e. plot no. 299 and plot no.299/P; correction of land records and re-mutation of the properties back to the name of the plaintiff cannot be granted without hearing the parties to whom the properties have been purportedly transferred to. The plaintiff's specific case is that the power of attorney has been misused by the defendant no.1 and her properties transferred and therefore, its cancellation is sought. It is also the plaintiff's plea that the transactions have been done behind her back by the defendant no.1. The parties who have been impleaded by the learned Civil Judge are purportedly transferees of the suit properties.

13. In ***Sudhamayee Pattnaik*** (supra) the Supreme Court thought it fit to hold that non impleadment of subsequent purchasers shall be at the risk of the plaintiff. However, it was not a case in which the prayers prayed for by the plaintiff could not have been granted without impleading the necessary parties.



14. In *Mumbai International Airport (P) Ltd. vs. Regency*

Convention Centre & Hotels (P) Ltd.² The Supreme Court

held:

“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.”

14. *The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) 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. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.*

² (2010) 7 SCC 417



15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

15. Therefore, considering the pleadings and the prayers sought for by the plaintiff this court is of the view that the impugned orders are well reasoned, correctly decides the applications, impleads the necessary and proper parties and no interference is called for.

16. The two writ petitions are accordingly dismissed. In the facts of the present case the parties to bear their own costs.

17. The observation on facts made in this judgment are made for the purpose of examining the *prima facie* case put up by the parties and for disposing of the present appeal against the impugned orders. The Trial Court shall not be prejudiced by the observations made herein during the trial.



18. All pending interlocutory applications are also disposed of accordingly.

(**Bhaskar Raj Pradhan**)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
to/