

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.9 of 2012

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1. Bir Bahadur Singh
2. Rang Bahadur Singh, both sons of Late Ganga Singh
3. Smt. Janki Devi alias Janki Dulari Devi, wife of Shri Bir Bahadur Singh
All residents of Villagbe Nimiya, Post Mokar, P.S. Agrer, District Rohtas
..... Applicants Appellants
..... Appellants

Versus

Pramod Kumar Mishra, son of Kedar Mishra, resident of Village Kothara, Post Mokar, P.S. Agrer, District Rohtas
..... Opposite party Respondent
..... Respondent

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Appearance :

For the Appellant/s : Mr. K.N.Choubey, Sr. Advocate, with
M/s A.N.Chobey, Ritu Priyadarshi and
Animesh Kumar
For the Respondent/s : M/s Mahesh Prasad No. 2 & Rewati Kant
Raman

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-09-2016

Heard Mr. Kamal Nayan Choubey, learned Senior Counsel appearing for the appellants. Mr. Mahesh Prasad No. 2, Advocate, is present on behalf of the respondent.

2. The applicants in the application under Order 21 Rule 97 CPC in the execution case are the appellants in this second appeal against the judgment and decree affirming the rejection of their application by the executing court.

3. The suit for specific performance of contract was filed by the respondent against the vendor. During the pendency of the suit, the vendor of the plaintiff transferred the suit property to the present appellants. The appellants were impleaded as party in the suit. The suit was decreed. The appellants thereafter filed appeal which was also



dismissed. It has been submitted by learned Senior Counsel for the appellants that S.A. No. 123 of 2003 has been filed by the appellants against the decree passed in the suit for specific performance of contract which has been admitted.

4. The plaintiff-decree holder thereafter filed execution case for execution of the decree of specific performance of contract. The present appellants filed a petition under Order 21 Rule 97 CPC raising objection in the execution case. The trial court dismissed the said petition holding that the petition under Order 21 Rule 97 could not have been maintained by a judgment debtor and that too when the said judgment debtor had been impleaded as party in the suit after purchase of the suit property pendente lite. The appeal thereafter by the present appellants has been dismissed by the impugned judgment and decree by the appellate court below.

5. Mr. Choubey, learned Senior Counsel for the appellants, has made limited submission that this appeal may be directed to be heard along with S.A. No. 123 of 2003 filed by the present appellants against the decree passed in the suit for specific performance of contract. Learned Senior Counsel, however, has not disputed the fact that the present appellants are purchasers pendente lite of the suit property.

6. After considering the submissions and perusal of the judgment and decree of the courts below, it is manifest that the present appellants are pendente lite purchasers of the suit property. The provision of order XXI Rule 102 CPC clearly bars the application of provision of Order XXI Rule 98 and Rule 100 CPC to a purchaser pendente lite. Even otherwise also in view of the judgment of the Apex Court in the case of



Guruswamy Nader vs. Lakshmi Ammal, AIR 2009 SC 2560, the principle of lispence is clearly applicable in the facts of the present case. Both the courts below therefore have committed no illegality in dismissing the application filed by the appellants under Order XXI Rule 97 CPC.

7. The submission on behalf of the appellants for hearing the present second appeal along with the earlier S.A. No. 123 of 2003 filed by them against the decree passed in the suit for specific performance of contract is clearly misconceived in view of the provisions of Rule 102 of Order XXI CPC.

8. This Court, therefore, comes to the conclusion that there is no substantial question of law arising for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
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