

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18608 of 2014

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Yogya Nath Mishra

.... Petitioner/s

Versus

Shobhakant Jha & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bhubneshwar Prasad

For the Respondent/s : Mr. Chandra Mohan Singh

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

4 26-02-2016

Heard learned senior counsel Mr. Ganpati Trivedi for

the petitioner and the learned counsel Mr. Baidhnath Thakur, on
behalf of the plaintiff-respondents.

This application under Article 227 of the Constitution
of India has been filed by the intervenor-petitioner for setting
aside the order dated 25.08.2014, passed by Sub-Judge IV,
Darbhanga in Title Suit No. 17 of 2002, whereby the Court below
has rejected the application filed under Order 1 Rule 10 of the
Code of Civil Procedure for being impleaded as party.

It appears that the plaintiff-respondent filed the
aforesaid Title Suit No. 17 of 2002 praying for declaration of title
and for declaration that the agreement executed by defendant 2nd
party in favour of D.R.D.A., Darbhanga is inoperative and not
binding on the plaintiff. The subject matter of the suit is about ten
acres. The petitioner filed application for being added as party on
the ground that in fact, the petitioner had purchased the property

by registered sale deed dated 20.01.1962 from the owner and, therefore, he is directly interested in the subject matter of the suit. The Court below by the impugned order rejected the said application relying on the decision of the Hon'ble Supreme Court reported in *AIR 2010 SC 3109 and 2012 (3) PLJR 272*.

The learned senior counsel Mr. Trivedi submitted that the plaintiff is claiming title over the suit property on the basis of Patta, said to have been executed in favour of the plaintiff's father by Darbhanga Raj and the property which has been purchased by Darbhanga Properties Private Limited Company, Darbhanga in the year 1962, has been made the subject matter of the suit for which the plaintiff is claiming title. Since the ownership of the company has not yet been transferred to any other party, if any order is passed in the suit, it will affect the petitioner, as the petitioner has direct interest in the suit property but the Court below relying on the aforesaid decisions, rejected the application erroneously misapplying the facts of those cases.

On the other hand, the learned counsel Mr. Thakur for the respondents submitted that it is the settled principles of law as has been held by the Hon'ble Supreme Court that plaintiff is the dominus litis and cannot be forced to fight a case against the person against whom he is not claiming any relief and if at all the petitioner is found to be necessary party, the suit may be dismissed



but the plaintiff cannot be forced to fight the case against the petitioner particularly when the company is not the petitioner, who had purchased the property rather Yogya Nath Mishra has filed this application in his private capacity, who is not at all the Director of the Company rather he is Additional Director, whose right as Additional Director has already been seized in 2001. The learned counsel further submitted that the scope of jurisdiction under Article 227 of the Constitution of India is very limited as has been enumerated by the Hon'ble Supreme Court in the Case of *(2013) 9 SCC 374*. On these grounds, the learned counsel submitted that this writ application be dismissed.

It is admitted fact that the company had purchased the property by the registered sale deed which has been annexed as Annexure-1 to this writ application under Article 227 of the Constitution of India. The objection raised by the plaintiff is that the company has not filed the application for being added as a party. So far this objection is concerned, it does not go to the root of the merit of the case. It can be said that it is only a misdescription of the party position. In the application, it has been specifically mentioned that he is the Director of the Company. For the time being, let us say that he is not the Director but then the company may file application. In my opinion, therefore, only case that there is misdiscreption of party, the Court of justice should



not reject the application on technicalities. The second objection that the jurisdiction of the High Court is limited, in view of the Hon'ble Supreme Court decision *Sameer Suresh Gupta Vrs. Rahul Kumar Agarwal (2013) 9 SCC 374* is concerned it may be mentioned here that in the said decision it has been held that "Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction."

In the present case admittedly the property purchased by the company is the subject matter of the suit. It is not denied. The objection is that there is misdescription of the party, who has filed the application for being added as party and that when the Court below has exercised the jurisdiction under Order 1 Rule 10 giving reason, the same cannot be interfered with in supervisory jurisdiction. It may be mentioned that the Hon'ble Supreme Court in the Case of *Mumbai International Airport Private Limited Vrs. Regency Convention Centre and Hotels private Limited and Others (2010) 7 SCC 417* equal to *AIR 2010 SC 3109* has held



that 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. The general rule in regard 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 that general rule is subject to the provision of Order 1 Rule 10(2) CPC by which the Court is given the discretion to add a party, any person who is found to be necessary party or proper party.

Therefore, in view of this decision, it is not the absolute right of the plaintiff to get his title declared in absence of a person whose property is directly involved in the suit. Therefore, in absence of the real owner of the property, in the present case, i.e., the purchaser who is the company itself the Court below cannot pass effective decree with regard to the subject matter of the suit which he is claiming for declaration of title. Now therefore, unless he is added as party in the present suit, the suit cannot proceed and the decree, which the plaintiff is claiming, cannot be granted by the court and if it will be granted, it will not

be binding on the real purchaser. Now, therefore, in view of this fact, it is found that the company is a necessary party in the suit. The Court below has not considered these aspects of the matter and only passed the remark that the plaintiff cannot be forced to fight the litigation against whom he is not claiming any relief in a suit. Thus the Court below has not exercised the jurisdiction vested in it by Order 1 Rule 10(2) C.P.C. in its right prospective.

In view of my above finding that the company is the purchaser, which has direct interest in the property, is necessary party. Thus the application filed by the petitioner is allowed. However, it is directed that the company should be added as party defendant through the Director. Misdiscreption should be corrected. Thus, this writ application is allowed. The impugned order passed by the Court below is hereby set aside and the company is made party defendant in the suit.

(Mungeshwar Sahoo, J)

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