

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21734 of 2011

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1. Raj Kumari Chaudharain W/O Late Shri Ram Narayan Chaudhary
 Resident Of Village-Gangauli, P.S. Bibhutipur, Distt. Samastipur.

....Applicant/Petitioner

Versus

1. Ratan Kumar Mishra S/O Late Bhola Mishra Resident Of Village & P.O.
 Surauli, P.S. Bibhutipur, District-Samastipur.

2. Smt. Sangeeta Chaudhary W/O Late Devendra Narayan Chaudhary
 Resident Of Village-Harpur Purendra (Keota), P.S. Dalsinghsarai, Distt.
 Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umanath Mishra, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

4 18-03-2016 Petitioner has challenged order dated 26.08.2011 passed
 by Sub-Judge-1st , Rosera, Samastipur in Title Suit No.110/2009
 whereby and whereunder prayer made on behalf of petitioner for
 her impleadment as a party in terms of Order I Rule 10 of the CPC
 has been rejected.

2. It has been submitted on behalf of petitioner that
 Smt. Sangeeta Chaudhary, the sole defendant had executed sale-
 deed in favour of petitioner on 02.06.2009 with respect to the land
 under dispute regarding which, Respondent No.1/plaintiff, Ratan
 Kumar Mishra has brought up the instant suit under the banner of
 Specific Relief Act asserting that there was an oral agreement for
 sale in between him as well as Smt. Sangeeta Chaudhary and in
 token thereof, earnest money was paid and as Smt. Sangeeta
 Chaudhary failed to honour the terms of the oral agreement,
 necessitated for filing of the suit asking for appropriate reliefs.

3. It has also been asserted that much before filing of the suit, Smt. Sangeeta Chaudhary (sole defendant) had executed registered sale deed in favour of petitioner and on account thereof, petitioner has stepped in the shoes of her vendor and further, a legal right has accrued which, she is bound to defend and for that, she should be allowed to be arrayed as a party. The learned lower court while adjudicating upon the same, completely overlooked.

4. It is not a matter of *lis pendense* in terms of Section 52 of the T.P. Act rather it happens to be an event which already occurred since before filing of the suit. On account thereof, the order impugned is fit to be set aside. Simultaneously, petitioner be allowed to be impleaded as a party.

5. Learned counsel for the respondent no.1 has controverted the submission made on behalf of petitioner and submitted that neither she happens to be a necessary party nor a proper party. To justify such argument, it has been submitted that negotiation was in between plaintiff and defendant. The suit has been drawn up by the plaintiff, asking for relief to direct the defendant to complete the terms of negotiation, which could only be answered by the defendant by way of accepting or denying the same. As presence of third party was not at all during course of negotiation, as such, presence of third party during course of continuance of suit is not at all warranted. In likewise manner, it has also been pleaded that petitioner, who was not at all conceived

at that very stage could not be allowed to jump in fray and deny the factum of negotiation having in between plaintiff and defendant. So submitted that the prayer of the petitioner is non maintainable.

6. In *Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.*, as reported in (2013) 5 SCC 397, wherein though the matter relating to impleading of party on the factum of *lis pendense* has been taken into account, however, present aspect, that means to say, presence of purchaser during course of suit filed under Specific Performance of Contract Act, has also been considered, and held as:-

25. In *Vidur Impex* {(2012) 8 SCC 384} the Supreme Court again had the opportunity to consider all the earlier judgments. The fact of the case was that a suit for specific performance of agreement was filed. The appellants and Bhagwati Developers though total strangers to the agreement, came into picture only when all the respondents entered into a clandestine transaction with the appellants for sale of the property and executed an agreement of sale which was followed by sale deed. Taking note of all the earlier decisions, the Court laid down the broad principles governing the disposal of application for impleadment. Para 41 is worth quoting hereinbelow: (SCC p. 413)

“41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an

effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.”

7. The Hon’ble Apex Court had also adjudicate upon the ambit and scope of Order I Rule 10 of the CPC and explained in following way:-

30. In the light of the settled principles of law on the doctrine of lis pendens, we have to examine the provisions of Order 1 Rule 10 of the Code of Civil Procedure. Order 1 Rule 10 empowers the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit.

31. Order 1 Rule 10 CPC reads as under:

“10. Suit in name of wrong plaintiff.—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the

court thinks just.

(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.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) ***Where defendant added, plaint to be amended.***—Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

From the bare reading of the aforesaid provision, it is manifest that sub-rule (2) of Rule 10 gives a wider discretion to the court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose presence in the court is essential for effective determination of the issues involved in the suit.

32. Considering the aforesaid provisions, this Court in *Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay* {(1992)2 SCC 524} held as under: (SCC p. 531, para 14)

“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 objective. 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 question 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 so 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 QB 357} wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie SA v. Bank of England*, {(1950)2 All ER 605} 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: (*Amon case*, QB {(1956)1 QB 357} p. 371)

‘... the test is: “May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights?”’

33. At this juncture, we would also like to refer to Section 19 of the Specific Relief Act which reads as under:

“19. Relief against parties and persons claiming under them by subsequent title.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another

company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

From the bare reading of the aforesaid provision, it is manifest that a contract for specific performance may be enforced against the parties to the contract and the persons mentioned in the said section. Clause (b) of Section 19 makes it very clear that a suit for specific performance cannot be enforced against a person who is a transferee from the vendor for valuable consideration and without notice of the original contract which is sought to be enforced in the suit.

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40. The aforesaid question was considered by the Calcutta High Court in *Kafiladdin v. Samiraddin*{AIR 1931 Cal 67}, where Their Lordships referred to the English law on this point and quoted one of the passages of the book authored by Dart, on ‘*Vendors and Purchasers*’, 8th Edn., Vol. 2, which reads as under: (*Kafiladdin case*{AIR 1931 Cal 67}, AIR p. 68)

“Equity will enforce specific performance of the contract for sale against the vendor himself and against all persons claiming under him by a title arising subsequently to the contract except purchasers for valuable consideration who have paid their money and taken a conveyance without notice to the original contract.”

Discussing elaborately, the Court finally observed: (*Kafiladdin case*{AIR 1931 Cal 67}, AIR p. 68)

“This statement of the law is exactly what is meant by the first two clauses of Section 27 of the Specific Relief Act. It is not necessary to refer to the English cases in which decrees have been passed against both the contracting party and the subsequent purchaser. It is enough to mention some of them: *Daniels v. Davison*,{(1809) 16 Ves Jun 249} *Potter v. Sanders*{(1846)6 Hare 1:67 ER 1057} and *Lightfoot v. Heron*{(1839) 3 Y&C Ex 586:160 ER 835}The

question did not pertinently arise in any reported case in India; but decrees in cases of specific performance of contract have been passed in several cases in different forms. In *Chunder Kant Roy v. Krishna Sunder Roy* {ILR (1884)10 Cal 710} the decree passed against the contracting party only was upheld. So it was in *Kannan v. Krishnan*{ILR (1890)13 Mad 324}. In *Himatlal Motilal v. Vasudev Ganesh Mhaskar*{ILR (1912) 36 Bom 446} the decree passed against the contracting defendant and the subsequent purchaser was approved. In *Faki Ibrahim v. Faki Gulam Mohidin*{AIR 1921 Bom 459} the decree passed against the subsequent purchaser only was adopted. In *Gangaram v. Laxman Ganoba Shet Chaudole* {ILR (1916) 40 Bom 498} the suit was by the subsequent purchaser and the decree was that he should convey the property to the person holding the prior agreement to sale. It would appear that the procedure adopted in passing decrees in such cases is not uniform. But it is proper that English procedure supported by the Specific Relief Act should be adopted. The apparent reasoning is that unless both the contracting party and the subsequent purchaser join in the conveyance it is possible that subsequently difficulties may arise with regard to the plaintiff's title."

41. The Supreme Court in *Durga Prasad v. Deep Chand* {AIR 1954 SC 75} referred to the aforementioned decision of the Calcutta High Court in *Kafiladdin case* {AIR 1931 Cal 67} and finally held: (*Durga Prasad case* {AIR 1954 SC 75}, AIR p. 81, para 42)

"42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in *Kafiladdin v. Samiraddin* {AIR 1931 Cal 67}, and appears to be the English practice. (See *Fry on Specific Performance*, 6th Edn., p. 90, para 207 and also *Potter v. Sanders* {(1846)6 Hare 1}.) We direct accordingly."

42. Again in *R.C. Chandiok v. Chuni Lal Sabharwal*{(1970) 3 SCC 140} this Court referred to their earlier decision and observed: (SCC p. 146, para

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“9. It is common ground that the plot in dispute has been transferred by the respondents and therefore the proper form of the decree would be the same as indicated at SCR p. 369 in *Durga Prasad v. Deep Chand* {AIR 1954 SC 75} viz.

‘to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff’. (AIR p. 81, para 42)

We order accordingly. The decree of the courts below is hereby set aside and the appeal is allowed with costs in this Court and the High Court.”

8. Thus, it is now manifest that subsequent purchaser can be allowed to be impleaded as a party and on account thereof, the order impugned did not justify its legality. Hence, is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

Patna High Court
March 18th 2016
Perwez/AFR

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