

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22827 of 2012

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1. Dipen Kumar Das @ Dipen Das S/O Late Anand Gopal Das Resident Of Mohalla- Khoda Nagar, Post Office- Motihari, Town, Police Station- Chahatauni, District- East Champara At Motihari.

.... Petitioner/s

Versus

1. Paresb Das S/O Late Mahanand Das Resident Of Mohalla- Khoda Nagar, Post Office- Motihari, Town, Police Station- Chahatauni, District- East Champara At Motihari.

2. Naresh Das S/O Late Mahanand Das Resident Of Mohalla- Khoda Nagar, Post Office- Motihari, Town, Police Station- Chahatauni, District- East Champara At Motihari.

3. Sakib Hasan S/O Hazi Samsul Hoda Resident Of Mohalla- Belbanwa, Post Office- Motihari Town Police Station- Motihari Town, District- East Champara At Motihari.

... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Verma –Advocate

For the Respondent/s : Mr. Rajesh Ranjan –Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 29-01-2016 Title Suit No. 262/1988 while was proceeding with, perceiving the illegal activity, the defendant had filed a petition under Order XXXIX Rule 1 and 2 of the CPC and the same was adjudicated upon vide order dated 17.09.2003. The learned lower court had perceived the averments made in the rejoinder filed by the plaintiff disclosing therein that he does not intend to sell the land. Again on 12.08.2003, another petition was filed by the plaintiff disclosing therein that the land is under his possession and further, he does not intend to sell the land. He further gave an undertaking that he will not sell the land till the pendency of instant case and in the aforesaid background, considering the

submission as well as undertaking as referred above, the learned lower court prohibited both the parties not to sell the land till pendency of the instant suit.

2. Subsequently thereof, the land under dispute has been transferred by one of the substituted plaintiffs namely, Paresh Das vide sale deed dated 26.12.2007 in contravention of order dated 17.09.2003. Being armed therewith, respondent no.3 filed a petition for allowing him to be an intervener in the proceeding which the learned lower court vide order dated 04.07.2012 has allowed. Hence this petition.

3. Heard learned counsel for the petitioner as well as learned counsel for respondent no.3.

4. It has been submitted on behalf of the petitioner that in utter violation of court's order dated 17.09.2003, the instant sale deed has been brought up into existence and on account thereof, the purchaser could not be identified to be a bona fide purchaser in ordinary sense because of the fact that during the intermediary period, even till today, the prohibitory order remains. Therefore, the status of the original plaintiffs has to be ascertained in pursuance of the relief so claimed for and for that, the assertions whatsoever been made in the plaint, have to be taken note of.

5. The learned counsel for the respondent no.3 has

submitted that by having sale deed in his favour, the respondent no.3 has put his leg in the shoe of his purchaser and, should be allowed in the status of one of the plaintiffs so that the relief so claimed for by the plaintiff be properly prosecuted.

6. Furthermore, it has also been submitted that petitioner had filed a petition before the learned lower court under Order XXXIX Rule 2 (A) of the CPC which has been rejected. That being so, it should not be treated that the event whereunder sale-deed was executed by one of the plaintiffs, Paresh Das in his favour happens to be in utter violation of prohibitory order passed by the learned lower court. Therefore, presence of Respondent no.3 is in accordance with law. It has also been submitted that the trial is at the fag end and any order adverse to Respondent No.3 will affect the fate of the trial.

7. Whenever an incident occurs during midst of pendency of trial, that is known as *lis pendence* and it is to be guided by the ultimate result of the trial. Sale deed having executed during continuance of a suit is also found within the ambit of *lis pendence* and the prospect of the aforesaid sale deed is to be governed with the ultimate result of the suit. There happens to be conflicting views with regard impleadment of a purchaser when the transaction happens to be within the coverage of *lis*

pendence.

8. Be that as it may, the presence of purchaser is to substitute his vendor and whatever status or rights vendor has, that has to be possessed by the purchaser. But, so far the present case is concerned, it has got a peculiarity. Petitioner/defendant was apprehensive with regard to intention of the plaintiffs since before and was also apprehensive that by his nefarious activities, plaintiffs are bound to change the present status of the suit land and on account thereof, had prayed for grant of an injunction as the defendant happens to be in possession of the land.

9. The aforesaid event was contested by the plaintiff and to re-affirm the same, gave an undertaking which was taken into account by the learned lower court that till disposal of the suit, the plaintiff will not indulge himself in any kind of negotiation relating to sale of the land under dispute and considering thereof, the learned lower court had prohibited any kind of execution of sale-deed with regard to land under dispute by both the parties and that being so, the prohibition eclipses subsequent conduct.

10. There is no controversy at any end that the sale in question was in utter violation of not only the order of the court rather against an undertaking given by the plaintiff himself. That being so, in between plaintiff and purchaser, the order of the court

has come and till its presence, there happens to be a curtain whereunder the right so claimed by the respondent no.3 on the basis of sale deed is found duly covered. That being so, the order impugned is found contrary to the spirit of law and is, accordingly, set aside.

11. Petition is allowed.

(Aditya Kumar Trivedi, J)

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