

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23090 of 2012

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1. SMT. ASHA DEVI @ ASHA DEVI W/O KEDARNATH SINGH R/O VILLAGE-
MALKAUNIYA, P.S. CHHATAUNI, DISTRICT- EAST CHAMPARAN

2. KEDARK NATH SINGH S/O LATE BHOLA SINGH R/O VILLAGE- MALKAUNIYA, P.S.
CHHATAUNI, DISTRICT- EAST CHAMPARAN

.... PETITIONER/S

VERSUS

1. SRI SHYAM NARAIN SINGH @ SHAM LAL SINGH S/O LATE RAM LAGAN SINGH R/O
VILLAGE- RAMGARHWA TOLA BARHARWA, P.S. MOTIHARI, P.O. RUPDIH, DISTRICT
EAST CHAMPARAN

2. SRI JYOT NARAIN SINGH @ JATU SINGH S/O LATE RAM LAGAN SINGH R/O
VILLAGE- RAMGARHWA TOLA BARHARWA, P.S. MOTIHARI, P.O. RUPDIH, DISTRICT
EAST CHAMPARAN

3. SRI SUNDARDEO SINGH S/O LATE RAM LAGAN SINGH R/O VILLAGE- RAMGARHWA
TOLA BARHARWA, P.S. MOTIHARI, P.O. RUPDIH, DISTRICT EAST CHAMPARAN

4. SRI NAGESHWAR SINGH S/O LATE KAPILDEO SINGH R/O VILLAGE- RAMGARHWA
TOLA BARHARWA, P.S. MOTIHARI, P.O. RUPDIH, DISTRICT- EAST CHAMPARAN

5. SRI RAMESHWAR SINGH S/O LATE KAPILDEO SINGH R/O VILLAGE- RAMGARHWA
TOLA BARHARWA, P.S. MOTIHARI, P.O. RUPDIH, DISTRICT- EAST CHAMPARAN

6. SRI RAJENDRA SINGH S/O LATE KAPILDEO SINGH R/O VILLAGE- RAMGARHWA
TOLA BARHARWA, P.S. MOTIHARI, P.O. RUPDIH, DISTRICT- EAST CHAMPARAN

7. SRI NAWAL SINGH S/O LATE KAPILDEO SINGH R/O VILLAGE- RAMGARHWA TOLA
BARHARWA, P.S. MOTIHARI, P.O. RUPDIH, DISTRICT- EAST CHAMPARAN

8. SRI NARESH SINGH S/O LATE KAPILDEO SINGH R/O VILLAGE- RAMGARHWA TOLA
BARHARWA, P.S. MOTIHARI, P.O. RUPDIH, DISTRICT- EAST CHAMPARAN

9. MAINA DEVI W/O RAJ MANGAL SINGH, D/O LATE KAPILDEO SINGH R/O VILLAGE-
RANGPUR, P.S. PATAHI, P.O.- GAUNAHA, DISTRICT- EAST CHAMPARAN

10. GULABO DEVI W/O RAJINAND SINGH, D/O LATE KAPILDEO SINGH R/O VILLAGE-
GAJPURA, P.O.- RUPDIH, P.S.- MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN

11. GAYATRI DEVI KUMARI W/O NATHU SINGH, D/O LATE KAPILDEO SINGH R/O
VILLAGE- BANKATWA, P.O. SEMRA, P.S. SUGAULI, DISTRICT- EAST CHAMPARAN

12. SRI BINOD SINGH S/O LATE RAM CHARITAR SINGH R/O VILLAGE RAMGARHWA
TOLA BARHARWA, P.S. MOTIHARI MUFFASIL, P.O. RUPDIH, DISTRICT- EAST
CHAMPARAN

13. MOSTT. RAJKALI DEVI W/O LATE BASHISTH NARAIN SINGH R/O VILLAGE
MADHOPUR CHHATA, P.O. NARHARHA, P.S.- BELSAND, DISTRICT- MUZAFFARPUR

14. BASUDEO SINGH S/O RAM UGRAH SINGH R/O VILLAGE- RAMGARHWA TOLA
BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN

15. KRISHNA SINGH S/O LATE RAM CHANDRA SINGH R/O VILLAGE- RAMGARHWA
TOLA BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST
CHAMPARAN

16. RAJ KISHORE SINGH S/O LATE RAM CHANDRA SINGH R/O VILLAGE-
RAMGARHWA TOLA BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT-
EAST CHAMPARAN

17. SURESH SINGH S/O LATE RAM CHANDRA SINGH R/O VILLAGE- RAMGARHWA
TOLA BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST
CHAMPARAN

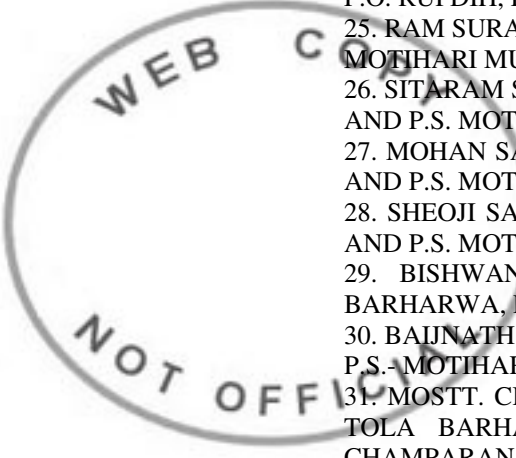
18. BIKARMA SINGH S/O KAMAL SINGH R/O MADHUMALAH, P.O. CHAPRA BAHAS,
P.S. SUGAULI, DISTRICT- EAST CHAMPARAN

19. MAHADEO SINGH S/O RAM ANUGRAH SINGH R/O VILLAGE- RAMGARHWA TOLA
BARHARWA, P.O.- RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN

20. HINGHARIYA DEVI W/O LATE BHENGA RAUT R/O VILLAGE- RAMGARHWA TOLA
BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN

21. MISHRI RAI S/O LATE BHENGA RAI R/O VILLAGE- RAMGARHWA TOLA
BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN

22. FULENA RAI S/O LATE BHENGA RAI R/O VILLAGE- RAMGARHWA TOLA
BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN

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23. BANTI RAI S/O LATE BHENGA RAI R/O VILLAGE- RAMGARHWA TOLA BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN
 24. JATA RAI S/O LATE BHENGA RAI R/O VILLAGE- RAMGARHWA TOLA BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN
 25. RAM SURAT SINGH S/O HIRA SINGH R/O VILLAGE- RAMGARHWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN
 26. SITARAM SAH S/O LAXMI SAH R/O MOHALLA- BISATIPATTI MOTIHARI TOWN, P.O. AND P.S. MOTIHARI TOWN, DISTRICT- EAST CHAMPARAN
 27. MOHAN SAH S/O LAXMI SAH R/O MOHALLA- BISATIPATTI MOTIHARI TOWN, P.O. AND P.S. MOTIHARI TOWN, DISTRICT- EAST CHAMPARAN
 28. SHEOJI SAH S/O LAXMI SAH R/O MOHALLA- BISATIPATTI MOTIHARI TOWN, P.O. AND P.S. MOTIHARI TOWN, DISTRICT- EAST CHAMPARAN
 29. BISHWANATH RAI S/O BANARSI RAI R/O VILLAGE- RAMGARHWA TOLA BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN
 30. BAIJNATH SINGH S/O RAM AYODHYA SINGH R/O VILLAGE- JAMALA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN
 31. MOSTT. CHHATHIYA DEVI W/O LATE JAGDISH RAI R/O VILLAGE- RAMGARHWA TOLA BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN
 32. TULSI RAI S/O LATE JAGDISH RAI R/O VILLAGE- RAMGARHWA TOLA BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN
 33. DHRUP LAL RAI S/O LATE JAGDISH RAI R/O VILLAGE- RAMGARHWA TOLA BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN
 34. SRI SHEONATH SAHANI S/O RAMPHAL SAHANI R/O VILLAGE- RAMGARHWA TOLA BARHARWA, P.O. RUPDIH, P.S. MOTIHARI MUFFASIL, DISTRICT- EAST CHAMPARAN
 35. SRI CHARITAR SAH S/O BANTI SAH R/O VILLAGE- NAKCHHED TOLA, P.O. AND P.S. MOTIHARI, DISTRICT- EAST CHAMPARAN

..... RESPONDENT/S

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Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava-Advocate
 Mr. Pravin Kumar-Advocate
 Mr. Kumar Uday Singh-Advocate
 For the Respondent/s : Mr. Ajay Kumar Singh-Advocate
 Mr. Arvind Kumar-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 29-03-2016

Petitioners are aggrieved by an order dated 25.06.2012 passed by Subordinate Judge-IV, East Champaran at Motihari in Title (Partition) Suit No.42 of 1991 whereby and whereunder the learned lower Court declined to allow petition filed on their behalf purported to be under Order-I, Rule-10 read with Section 151 of the C.P.C.

2. It has been submitted on behalf of petitioners that their



vendors are defendants in the present Title (Partition) Suit No.42 of 1991 wherein vendors of the petitioners appeared, filed their respective written statements and then, failed to contest the suit. Therefore, the suit was decided in their absence on account of their negligence. Preliminary decree has been prepared. Subsequently thereof, final decree proceeding has been taken up wherein Survey Knowing Pleader Commissioner has been appointed, who has already submitted his report and the same is yet to be admitted. Therefore, to protect their interest which, on account of execution of sale deed in their favour being prior to launching of suit happens to be paramount than that of their vendors relating to the land duly covered under sale deeds and so, they should have been allowed to implead.

3. It has also been submitted that partition suit cannot be equated with other kinds of litigation, because of the fact that in partition suit, so many preliminary decrees are permissible and in likewise manner, the final decree as, identification of share till conclusion is always subject to variance on account of death/ birth of a coparcener as well as accrual of other kinds of exigencies.

4. It has also been submitted that as the report of Survey Knowing Pleader Commissioner is yet to be accepted on account thereof, there happens to be presence of an opportunity to object over the Pleader Commissioner's report and, petitioners being vendees



have got an interest relating to the land purchased by them to be allotted to the share of their vendors, so that they should not be disturbed, which on account of absence of their vendor, are found legally competent to place and plead. The Courts while considering acceptability of Commissioner's report very much could also exactitude the issue.

5. Elaborating further submission on that very score, it has been submitted that Jhokha Rai was the common ancestor, who had three sons namely Goberdhan Rai, Lal Bihari Rai and Jhingur Rai as is evident from genealogical table of the plaint of Title (Partition) Suit No.42 of 1991. One of the grand sons of Jhingur Rai namely Kapildeo Rai, at an earlier occasion filed Title (Partition) Suit No.237 of 1968 against the remaining branches, which was dismissed with certain observations. Subsequently thereof, another partition suit was filed bearing Title (Partition) Suit No.35 of 1983, which was allowed, preliminary as well as final decree was prepared. However, the reason best known to the plaintiffs of aforesaid Title (Partition) Suit No.35 of 1983, some of the members of branches of Jhingur was not made party and therefore, those persons have filed Title (Partition) Suit No.42 of 1991 wherein a relief was sought for relating to Schedule-II property exclusively belonging to them on account of partition having effected in the family as early as in the year 1938, partition of



Schedule-III property, the judgment and decree passed in Title (Partition) Suit No.35 of 1983 not binding upon them. It has also been submitted that petitioners happen to be purchaser of the land through six sale deeds dated 06.12.1994, 14.12.1994, 19.5.1995, 27.01.1997, 14.09.1994, 09.02.2001. It has also been submitted that petitioners' vendors' status have also been recognized. It has also been submitted that the sale happens to be for valid consideration and in pursuance thereof, petitioners are over the land peacefully. As such, presence of petitioners to protect their interest at the present juncture is essential as well as for just decision of the case. Also ***relied upon 1998(2) P.L.J.R. 596, (2013)5 SCC 397, 2004 (1) P.L.J.R. 67 (SC), A.I.R. 1945 Patna 296.***

6. On the other hand, the learned counsel for the respondents opposed the prayer and submitted that petitioners' status in terms of Order-I, Rule-10 of the C.P.C. is non-recognizable in the background of the fact that they are neither necessary party nor proper party. In likewise manner, it has also been submitted that at the fag end of suit when the final decree is going to be prepared, presence of petitioners will serve no purpose at all nor their absence will have an adverse impact over the legality, proprietary of the final decree.

7. Apart from this, as has been submitted by the learned counsel for the respondents that presence of vendors of petitioners

have been duly acknowledged on account thereof, there would be allotment of lands in terms of share so identified by virtue of preliminary decree and, petitioners being purchasers will have a say against their vendors.

8. Learned counsel for the respondents also submitted that conduct of the party has also to be seen. Defendants, that means to say, vendors of the petitioners after filing of written statement disappeared on the other hand began to make illegal, collusive transfer to make the suit clumsy, because of the fact that Execution Case No.03 of 1991, 02 of 1992 relating to Title (Partition) Suit No.35 of 1983 was taken up after filing of instant partition suit wherein, the respondents/ plaintiffs were not at all impleaded as a party which necessitate for drawing up instant Title (Partition) Suit. Because of the fact that the documents in question happens to be sham transaction, on account thereof, it could not be relied upon.

9. It has also been submitted that petitioners are not at all in possession of the land and in likewise manner, could not claim particular piece of land having under their sale deed as, the aforesaid land had purposely been incorporated in the sale deed by the vendors of the petitioners to defeat the interest of the respondents/ plaintiffs. Consequent thereupon, the learned lower Court after considering the event in its appropriate manner, dismissed the petition which needs no

interference.

10. After hearing submission made on behalf of rival parties, it is apparent that both the parties on one pretext or the other, is taking every opportunity to axe upon interest of other. It is evident that in Title (Partition) Suit No.237 of 1968, existence of partition in the year 1938 has been duly acknowledged and the aforesaid partition suit was dismissed identifying status of the respective parties. In the aforesaid background, Title (Partition) Suit No.35 of 1983 was filed subsequently, which was allowed, preliminary decree was prepared followed with preparation of final decree whereunder delivery of possession was also effected and during midst thereof, instant Title (Partition) Suit has been filed, which has also been allowed and as stated above, after preparation of preliminary decree, Pleader Commissioner's report is available for its acceptance. From the order impugned, it is also evident that vendors of petitioners have also drawn up a suit bearing No.273 of 2006, which is pending. Petitioners failed to disclose the nature of the suit and further, whether they have also joined along with their vendors. It is also evident from the order impugned that a petition is pending at the behest of their vendor dated 24.05.2007 and the same is still pending.

11. There happens to be absence of vendors of petitioners during course of trial after filing of written statement. Suit has already



been decided. Preparation of final decree is going on and for that Pleader Commissioner's report is pending before the Court. Therefore, till today an opportunity is available whereunder one has to say and place his grievances over Pleader Commissioner's report. Had there been continuous presence of vendors of petitioners, would have an opportunity to plead over proper mode of allotment, but having their absence, deprived of petitioners at least to have say regarding his interest. Although, as is evident, some of the documents has been executed after commencing of instant proceeding (Title (Partition) Suit No.42 of 1991) and that being so, comes within ambit of lis pendence in terms of Section 52 of the T. P. Act. However, Section 52 does not mandate that the document executed in between could be identified as illegal, void, inoperative rather is to sustain impact of the judgment and decree. This happens to be one aspect. The other aspect is, a coparcener of a Joint Hindu Family is legally entitled to transfer his share, and the purchaser, if he wants to carve out his share, then in that event, will have to file a partition suit. When a partition suit has been initiated amongst coparceners, then in that event, will not a purchaser has right to say.

12. On account of absence of judgment and preliminary decree of Title (Partition) Suit No.42 of 1991, the Court is not known to the finding so recorded, even then the dispute, even at the present

moment, is found redressable as the Pleader Commissioner's report, till its acceptance is found subject to correction, modification, rejection, acceptance.

13. In ***Amit Kumar Shaw and another v. Farida Khatoon and another reported in A.I.R. 2005 (SC) 2209***, it has been held:-

"7. It is beneficial to reproduce Order I Rule 10, Order XXII Rule 10 of the Code of Civil Procedure, 1908 and Section 52 of the Transfer of Property Act, 1882 which read as under:

"Order I Rule 10

(1) Suit in name of wrong plaintiff - 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."

"Order XXII Rule 10

Procedure in case of assignment before final order in suit

(1) In other cases of an assignment, creation or

devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule-(1)."

Section 52 of the Transfer of Property Act

"Transfer of property pending suit relating thereto - During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation - For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of



competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

8. On a combined reading of Order 1 Rule 10, Order XXII Rule 10 of the Code of Civil Procedure and Section 52 of the Transfer of Property Act, can an application for substitution by a subsequent transferee be rejected and the subsequent purchaser be non-suited altogether is the prime question for consideration in these appeals.

9. The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases:

(1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or

(2) When, without his presence, the questions in the suit cannot be completely decided.

10. The power of a Court to add a party to a

proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.

11. The application under Order XXII Rule 10 can be made to the appellate Court even though the devolution of interest occurred when the case was pending in the trial Court. In the instant case, the suit was decreed in favour of Fakir Mohammad by judgment and decree dated 03.11.1989. The suit was contested by two sets of defendants, one set of defendants was Birendra Nath Dey and Kalyani Dey and other set of defendants was Jagat Mohan Das alone. The appeals were preferred by the parties. Both the appeals were heard and by a common judgment and order dated 25.6.1992, the said appeals were allowed and the judgment and decree passed by the Munsif was set aside. By a deed of Assignment dated 15.12.1995, the said Birendra Nath Dey assigned his leasehold right in respect of 132 A Circular Garden Reach Road, presently known as 132 A, Karl Marx Sarani, Kolkata in favour of the appellants. By a deed of sale executed on 15.12.1995, duly registered with the Additional Registrar of Assurances, Calcutta,



Kalyani Dey sold the property being 132 B of the above address to the other appellant. The second appeals filed by the parties were pending on the file of the High Court at Calcutta. The appellants had no knowledge of the second appeals. Thereafter on verification, the appellants came to know about the pendency of the appeals which necessitated them to file the applications for substitution in the second appeals. In the meanwhile, the appellants filed the applications before the Municipal authorities for mutation of their names in respect of the property on 24.12.2002 and the Municipal authority informed the appellants that they are not in a position to mutate the names of the appellants of the property in question because of the pendency of the two second appeals before the High Court at Calcutta. Thereafter the appellants engaged an advocate to find out whether any such appeals have been filed by the parties. The advocate so engaged informed the appellants that two appeals being S.A.Nos. 631 and 632 of 1993 were filed by Fakir Mohammad, Farida Khatton and Ors; Respondent Nos. herein. It was also informed that the said appeals were admitted by the High Court but the impugned judgment and order was neither prayed for stay nor stayed. Therefore, it was also submitted by the appellants that since the appellants have become the



absolute owners of the property, their interest will be highly prejudiced and they will be vitally affected, if any order is passed by the High Court without hearing the appellants in the matter. Therefore, they prayed that the appellants are to be substituted in place and stead of the present respondents, since they have no existing and subsisting right, title or interest in the property.

12. *Under Order XXII, Rule 10, no detailed inquiry at the stage of granting leave is contemplated. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit.*

13. *In this connection, the provisions of Section 52 of the Transfer of Property Act, 1882 which has been extracted above may be noted.*

14. *An alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under O I Rule 10. Since under the doctrine of lis*

pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.

15. Section 52 of the Transfer of Property Act is an expression of the principle "pending a litigation nothing new should be introduced". It provides that pendente lite, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This Section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a lis pendens, the following elements must be present:

- 1. There must be a suit or proceeding pending in a Court of competent jurisdiction.*
- 2. The suit or proceeding must not be collusive.*
- 3. The litigation must be one in which right to immovable property is directly and specifically in question.*
- 4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.*
- 5. Such transfer must affect the rights of the other*

party that may ultimately accrue under the terms of the decree or order.

16. The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant, the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under Order XXII Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where

the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.”

14. It is needless to say that till acceptance of Pleader Commissioner’s report in terms of Order-XXVI, Rule-14, it is open to objection and further, subject to acceptance or rejection. That means to say, at the present stage, presence of petitioners will not cause prejudice rather will enable the Court to perceive the report in its right perspective whether ‘Pattibandhi’ has been made properly, equitably and effectively.

15. Thus, the order impugned is set aside. Petition is allowed. However, in the facts and circumstances of the case, parties will bear their own costs.

(Aditya Kumar Trivedi, J)

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