

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1763 of 2016

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Ram Narain Singh & Ors

.... Petitioner/s

Versus

Tej Narain Singh @ Bachcha Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ritu Raj Thakur

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 25-07-2016 **1.** Heard the learned counsel, Mr. Rohan Priyam Sahay,

for the petitioner and the learned counsel, Mr. Ajay Kumar Singh,

for the respondent.

2. This application under Article 227 of the Constitution of

India has been filed by the plaintiffs petitioners for setting aside

the order dated 4.11.2015 passed by Sub Judge Vth, Saran at

Chapra in Partition Suit No.25 of 1991.

3. It appears that this partition suit was filed by the

plaintiff petitioner. In the said partition suit, injunction order was

passed restraining the parties from transferring the suit property

during the pendency of the suit. However, some transfers were

made by the plaintiffs. Thereafter, the defendant No.1 and 5 filed

application under Oder 1 Rule 10 CPC for adding the purchasers

as party in the suit. By the impugned order, the Court below has

allowed the same.

4. The learned counsel for the petitioner submitted that in view of the Supreme Court decision in the case of ***Surjeet Singh Vs. Harbans Singh AIR 1996 SC 135***, the transfer made by the plaintiff petitioner in favour of the purchaser should be ignored because it is the transaction made after the injunction order was passed by the Court below. The learned counsel further submitted that in the present case, neither the plaintiff is approaching the Court nor the purchasers have filed this application under Order 1 Rule 10 for being added as party in the partition suit. In such circumstances, the defendants have got no role to play. They cannot dictate the plaintiff against whom the plaintiff should fight the suit and who should be added as party in the suit filed by the plaintiff.

5. On the other hand, the learned counsel, Mr. Ajay Kumar Singh, appearing on behalf of the respondent submitted that the Court has the jurisdiction suo motu to add a person if the Court finds that the person is a necessary party. Section 52 only provides that the transfer will be hit of lispendence but the transfer will never be a void transaction. In the present case, the Court below recorded clear finding that the purchasers are the necessary

party and, therefore, he has directed the plaintiff to mitigate them as party defendant in the suit. In view of the above facts according to the learned counsel, the writ application be dismissed.

6. It is admitted position that the transfer has been made by the plaintiff after passing the injunction order. The Hon'ble Supreme Court in the case of *Surjeet Singh Vs. Harbans Singh AIR 1996 SC 135* has held that **'it did not make any appreciable difference whether property per se have been alienated or a decree pertaining to that property. In defiance of the restraint order, the alienation / assignation was made. If we are to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in such circumstances, has the duty, as also the right, to treat the alienation / assignation as having not taken place.'** This is consistent view of the Hon'ble Supreme Court. Reference may be made in this connection to the decision of the Hon'ble Supreme Court reported in *AIR 2012 SC 2925*.



7. In view of the settled principal of law laid down by the Hon'ble Supreme Court, the transaction / transfer made by the plaintiff in favour of the purchaser after injunction order is passed has to be ignored for the purpose of Order 1 Rule 10 CPC. Now, if the document, i.e., transfer itself is ignored, there is no question of adding the purchaser as party defendant in the suit arises. Further it may be mentioned here that the Hon'ble Supreme Court in the case of **Mumbai International Airport vs. Regency Convention Centre and Hotel Pvt. Ltd (2010) 7 SCC 417** has held **'a necessary party is a person who ought to have been joint 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.'** In view of this principal as has been held by the Hon'ble Supreme Court, the defendant can taken this ground that the suit is liable to be dismissed for non-joinder of necessary party.'

8. In the same decision, the Hon'ble Supreme Court has held that **'the general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis may choose the person against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief.'** Now, therefore, in view of this principal the defendant has

got no role to play. In other words, the defendant cannot dictate the plaintiff to make certain person as party defendant in the suit. He can only contend that the suit is bad for non-joined of party.

9. The learned counsel, Mr. Ajay Kumar Singh, for the respondent relied upon a decision of this Court reported in **2013 (4) PLJR 434**. So far this decision is concerned, it is entirely different. Because in that case, purchaser approached the Court for being added as party.

10. In the case of **Mumbai International (Supra)**, the Hon'ble Supreme Court has given some guidelines at paragraph 24. At paragraph 24.3, it has been held that **'if a person makes an application for being impleaded contending that he is necessary party and if the Court finds that he is a necessary party, it can implead him. If the plaintiff oppose such impleadment, then instead of impleading such a party, who is found to be a necessary party, the Court may proceed to dismiss the suit.'**

11. At paragraph 24.4., it has been held that **'if an application is made by a plaintiff for impleading someone as a proper party, subject to limitation bona fides etc., the Court will normally implead him.'**

12. As has been admitted by the parties, the transfer have been made during the pendency of the suit and after passing the injunction order, therefore, the defendant has got no role to play in the case. Since transaction itself is contrary to the injunction order, there is no question of relying on the transfer at this stage arises. Further, the interest of the transferee is protected by the plaintiffs and the presence of the purchasers is not necessary for deciding the dispute between the plaintiffs and defendants.

13. In view of the above settled principal of law and facts and circumstances of the case, the impugned order passed by the Court below is in the manner not permitted by law. Therefore, this writ application is allowed. The impugned order dated 04.11.2015 passed by Sub Judge Vth, Saran at Chapra in Partition Suit No.25 of 1991 is hereby set aside.

(Mungeshwar Sahoo, J)

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