

1. Chandrawati Devi Wife Of Saroj Kumar Sharma Resident Of Mohalla - Naya Tola, P.S - Jehanabad, District – Jehanabad..... Intervenor/ Petitioner

Versus

1. Mahesh Prasad Son Of Late Durga Prasad Resident Of Mohalla - Naya Tola, P.O. And P.S. - Jehanabad, District - Jehanabad

2. Alakh Niranjan Kumar Son Of Late Durga Prasad Resident Of Mohalla - Naya Tola, P.O. And P.S. - Jehanabad, District - Jehanabad

3. Gopal Prasad Son Of Late Durga Prasad Resident Of Mohalla - Naya Tola, P.O. And P.S. - Jehanabad, District - Jehanabad

4. Jehanabad Nagar Palika Through Its Executive Officer, P.O. And P.S .And District Jehanabad

5. Chairman And Ward Commissioners, Jehanabad Nagar Palika, P.O. And P.S. And District Jehanabad

.... Respondent/s

For the Petitioner/s : Mr. Sidhartha Prasad –Advocate
 For the Respondents 1 to 3 : Mr. Waliur Rahman –Advocate
 Mr. Rajesh Kumar –Advocate
 Mr. Nishant Kumar Sinha –Advocate
 For Respondent no.4 : Mr. Sanjay Prakash Verma –Advocate

4 30-03-2016 Heard learned counsel for the petitioner, learned
counsel for the respondents as well as learned counsel representing
Municipal Corporation, Jehanabad.

2. Petitioner, who filed a petition under Order I Rule 10 (2) of the CPC on 26.11.2012 before Sub-Judge-1st, Jehanabad in connection with Title Suit No.184/2010 has not been permitted to be impleaded as a party by the order impugned dated 14.02.2013 and on account thereof, assailed the order impugned.

3. It has been submitted on behalf of petitioner that at



an earlier occasion dispute was going on in between the parties under Section 133 of the Cr.P.C wherein the plaintiff/respondent nos. 1 to 3 lost and subsequently thereof, filed the instant title suit without impleading the petitioner for the same cause and for that, presence of petitioner was necessary to finally adjudicate the lis in proper way. It has further been submitted that presence of petitioner to be owner of part and parcel of old plot no. 1743 is an admitted fact as is evident from para-9 of the plaint (Annexure-1) therefore, adjudication relating to CSP No. 1743, without impleading the petitioner, will certainly adversely affect her interest. It has also been submitted that from para-10 of the plaint, it is evident that RSP No. 241 which has been carved out from CSP No.1743 has got 70 Ars while, as per schedule of the plaint, the area has been increased to the extent of 140 Ars and without explaining whether the aforesaid area did not encroach upon the land belonging to the petitioner, in case, the suit is decreed, will certainly encroach upon her land. Furthermore, it has also been submitted that multiplicity of the suit is to be avoided and for that, presence of petitioner is necessary for proper adjudication and in the aforesaid background, status of petitioner happens to be that of necessary party in whose absence the dispute cannot be properly adjudicated upon. Therefore, finding recorded by the learned

lower court happens to be wrong, illegal, perverse and is fit to be set aside.

4. The learned counsel for the respondents supported the findings recorded by the learned lower court.

5. It has been alleged that CSP No.1747 and 1743 were obtained by Balkishun Sah from the ex-landlord and with regard to certain discrepancies, the matter has been detailed and further, as per para-9 of the plaint, it is evident that father of the plaintiff had sold 1 Kattha of land vide sale deed dated 17.09.1975, northern side of CSP No.1743 in favour of Laxmi Narain Singh who vide deed of gift dated 28.04.1976 transferred the same in favour of Smt. Madheshwari Devi who vide registered sale-deed dated 16.03.2002 transferred the same in favour of petitioner.

6. Petitioner while filing petition before the learned lower court (Annexure-2) had not disclosed RSP number which she had purchased from Smt. Madheshwari Devi and on account thereof, her interest relating to new Survey Plot No. 241 carved out from CSP No. 1743 and any interest relating thereto is found shrouded under mist. Apart from this, from paragraph-4 of the aforesaid petition, it is evident that the petitioner has claimed her interest as well as possession over the suit land, and in likewise manner, during course of argument, the learned counsel for the

petitioner raised the plea of easementary right. Both two status are contradictory to each other. Virtually, the stand taken by the petitioner discloses her confused state of mind.

7. There is no dispute over recent survey entry relating to new survey plat no. 241 having been carved out from CSP No. 1743 being in the name of defendant/respondent no-4, Jehanabad Nagarpalika and relief so sought for in the aforesaid background happens to be declaration of title as well as confirmation of possession. It is needless to say that during course of continuance of proceeding if the plaintiff is found out of possession, then in that event, the declaratory title suit is bound to fail in terms of Section 34 of the Specific Relief Act.

8. Be that as it may, on account of inconsistent plea having been made on behalf of petitioner, the learned lower court had rightly rejected the prayer. On that very score, the instant petition is also found devoid of merit and is accordingly, rejected.

9. However, it is made clear that petitioner is at liberty to take proper legal recourse in accordance with law to protect her right, in case, she finds it at stake.

(Aditya Kumar Trivedi, J)

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