

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19596 of 2012

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1. Ram Naresh Chourasia @ Ram Naresh Mahato, Husband of Nirmala Devi,
 2. Vijay Chourasia
 3. Sanjay Kumar Chourasia
Both sons of Late Nirmala Devi
 4. Shail Devi, Daughter of Late Nirmala Devi,
All resident of Village & P.O.- Madarpur, Police Station- Maheshkhunt,
District- Khagaria, Bihar.

.... Plaintiff-Petitioners

Versus

1. Smt. Sharmila Devi, D/O Late Singheshwar Mandal, Wife Of Sri Chandra Chaurasia, Resident of Village- Mallia, P.O.- Jamalpur Gogari, P.S.- Gogari, District- Khagaria
2. Arvind Kumar, Son of Umesh Chaurasia, Resident of Village- Vaisa, P.S.- Maraiya, District- Khagaria
3. Smt. Meera Devi, Wife of Late Biranchi Mandal
4. Smt. Geeta Devi, Daughter of Late Biranchi Mandal and Wife of Awadhesh Chaurasia
5. Bhushan Kumar Chaurasia, Son of Late Biranchi Mandal, All Resident of Village + P.O.- Madarpur, P.S.- Maheshkhunt, District- Khagaria
6. Md. Khushir, S/o Md. Hakimuddin, R/o Village- Lewa, P.O.- Pakraili, P.S.- Maheshkhunt, District- Khagaria.
7. Kalpana Kumari, W/O Amarendra Kumar Paswan, At & P.O.- Madarpur, P.S.- Maheshkhunt, District- Khagaria
8. Smt. Indu Devi, W/o Sri Kartik Sah, R/o Village- Lewa, P.O.- Pakraili, P.S.- Maheshkhunt, District- Khagaria.
9. Smt. Fulwati Devi, W/o Rajo Sah, R/o Village- Lewa, P.O.- Pakraili, P.S.- Maheshkhunt, District- Khagaria.
10. Manju Devi, W/o Anil Paswan, At & P.O.- Madarpur, P.S.- Maheshkhunt, District- Khagaria.
11. Kiran Kumari, Wife of Kishore Kumar, At & P.O.- Madarpur, P.S.- Maheshkhunt, District- Khagaria.
12. Parwati Devi, Wife of Raghunandan Mahton, At & P.O. and P.S.- Maheshkhunt, District- Khagaria.
13. Kiran Chaurasia, Wife of Umesh Chaurasia, Resident of Village- Dukha Tol, P.O. & P.S.- Maheshkhunt, District- Khagaria
14. Ramraji Devi, Wife of Upendra Mandal, At & P.O.- Madarpur, P.S.- Maheshkhunt, District- Khagaria.

.... Interveners Defendants-Respondents

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Appearance :

For the Petitioner : Mr. Shyam Narayan Pandey, Advocate
Mr. Krishna Chandra Jha, Advocate

For Respondent no.4 : Mr. Rakesh Chandra, Advocate

For Respondent nos.6 to 14 : Mr. Rajiv Ranjan Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

11 22-11-2017 The petitioners are plaintiffs of Title Suit No.36 of 2009 pending in the Court of Subordinate Judge-III, Khagaria. They have prayed to quash the order dated 31.07.2012 passed in Title Suit No.36 of 2009 whereby and whereunder the learned Subordinate Judge impleaded respondent nos.6 to 14 as party to the suit. The respondent nos.6 to 14 are purchasers from defendant no.3.

2. Heard learned counsel for the petitioners as well as the respondents.

3. The original plaintiff, Nirmala Devi filed the aforesaid suit claiming 1/3rd share in the suit property mentioned in Schedule A of the plaint. She further sought relief to declare that defendant nos.3, 4 and 5 did not inherit or succeed the property left by Late Singheshwar Mandal. The defendant nos.1 to 5 although appeared in the suit but they were debarred from filing written statement and the suit was taken up for ex-parte hearing against them. The respondent nos.6 to 14 filed a petition under Order I Rule 10 of C.P.C. for impleading them as defendant. They claim to have purchased the land from respondent-defendant no.3 by virtue of 12 registered sale deeds. The intervener, Fulmati Devi purchased the land by virtue of registered sale deed dated



29.01.2008 i.e. much earlier to the filing of present partition suit. The court below allowed their petition and impleaded all the purchasers as defendant.

4. The contention of learned counsel for the petitioners is that the vendor of these defendants has been debarred from filing written statement. The defendant no.3 is stranger to the family of petitioners and she had no right to transfer any portion of the suit property. The sale deed of intervener defendants are hit by the provisions of Section 52 of the Transfer of Property Act as they purchased the land after institution of the suit.

5. The contention of learned counsel for the respondents (intervener defendants) is that the defendant no.3 is vendor of the defendant and she has been debarred from filing written statement and so virtually there is no one to contest the case. The intervener defendants are bonafide purchasers and so in order to protect their interest they are necessary party to the suit. The learned counsel in support of their contention has cited the ruling reported in **A.I.R. 2005 Supreme Court 2209 (Amit Kumar Shaw and another Vs. Farida Khatoon and another)**. The Hon'ble Apex Court while discussing the applicability of doctrine of *lis pendense* has observed as follows:-

“.....though the plaintiff is under no obligation to make a *lis pendense* transferee a party; under O.22, R.10 an alienee pendente lite may



be joined as party, 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.”

6. Admittedly, intervener defendants have purchased the land from defendant no.3 by virtue of 12 registered sale deeds. One of the sale deed was executed by defendant no.3 much before filing of present suit. The Hon’ble Apex Court in the case of **Gajara Vishnu Gosavi Vs. Prakash Nanasahed Kamble & Ors.** reported in **2009 (4) P.L.J.R. 225 (SC)** has held that the purchaser has a right only to sue for partition of the property and ask for allotment of his share in the suit property. Therefore, if purchaser has such right to file partition suit and pray for carving out separate share why not the purchasers be allowed to pray the same by impleading themselves as party to the suit.

7. Thus, I find that the court below has rightly allowed the intervention application under Order 1 Rule 10 of C.P.C. The impugned order does not suffer from any jurisdictional error requiring any interference. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

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