

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18708 of 2013

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Rajnish Kumar S/o Late Bachchu Prasad, resident of village- Vijman Weldariya,
P.S- Deep Nagar, District- Nalanda. Petitioner/s

Versus

1. Sona Devi W/o Damodar Prasad, resident of village- Asthawa, P.S- Asthawa,
District- Nalanda.
2. Satyendra Kumar S/o Late Bachchu Prasad, resident of village- Vijman
Weldariya, P.S- Deep Nagar, District- Nalanda. Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Surendra Kumar, Adv.

For the Respondent/s : Mr. Mrigendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

C.A.V. JUDGMENT

Date: 04.12.2017

The petitioner has filed this application for setting aside the order dated 18.04.2013 passed by the Sub-Judge-I, Biharsharif, Nalanda in Title Suit No. 278 of 2011 whereby and whereunder the Court below rejected the petition filed under Order 1 Rule 10 and Section 151 of Code of Civil Procedure.

2. The plaintiffs filed a Title Suit No. 278 of 2011 before the Court below for passing a decree for specific performance of contract on the basis of deed of agreement dated 05.07.2011. The defendant executed the aforesaid deed of agreement agreeing therein to execute the sale deed with respect to 6 katha, 6 dhur and 6 dhurki land of plot no.2524 of khata no. 139 at the rate of Rs. 1,60,000/- per katha. The defendant no. 1 received an amount of Rs.73,100/- as earnest money and agreed to execute the sale deed on payment of



balance of consideration amount. The defendant did not execute the sale deed and so after giving legal notice on 05.08.2011 and 15.10.2011, the plaintiff filed the suit for specific performance of contract. The defendant during the pendency of the suit, transferred 3 katha land to Deo Nandan Yadav and so the plaintiff filed a petition on 23.01.2013 under Order 1 Rule 10 of Code of Civil Procedure for impleading the purchaser as defendant no. 2 to the suit in view of provisions of section 19 (b) of the Specific Relief Act which after hearing was rejected. The plaintiff filed a petition to review the said order which was also rejected.

3. The contention of the learned counsel for the petitioner is that the defendant malafide in order to frustrate the contract, has executed the sale deed in favour of Deo Nandan Yadav. The said document is collusive and not binding on the plaintiffs and so the alleged transferee is necessary party to the said suit.

4. The learned counsel for the respondents on the other hand, submitted that the said agreement deed is forged and fabricated and the plaintiff has not acquired any right or title and so the defendant in order to meet her necessity executed the sale deed in favour of Deo Nandan Yadav.

5. Having heard the learned counsels for both sides, I find that it is admitted fact that the defendant no. 1 executed the sale



deed in favour of Deo Nandan Yadav during the pendency of the suit. The provisions of section 19 (b) of Specific Relief Act is explicit. According to section 19 (a) of the Act, the contract may be enforced against any person claiming under him by a title arising subsequently to the contract except the transferee for valid who has paid his money in good faith and without notice of the original contract. In the event the plaintiff succeeds in proving his case, he will have to face another lis against the purchaser.

6. The plaintiff asserts that the subsequent purchaser has purchased the property having full knowledge of his contract and so one of the most important issues for adjudication arises for consideration is as to whether the subsequent transfer is in good faith bonafide and without any notice of plaintiff's contract.

7. In view of above facts, I find that the transferee from the defendant is a necessary party and the plaintiff has legal right to seek relief against him also by impleading him as party to the suit. As such the impugned order is set aside and this application is allowed. The transferee from defendant is ordered to be impleaded as defendant 2nd party to the suit.

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	14.11.2017
Uploading Date	04.12.2017
Transmission Date	

(Sanjay Kumar, J)

