

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CIVIL MISCELLANEOUS JURISDICTION No.514 of 2018**

=====

1. Niki Kumari W/o Ranjit Kumar Resident of Village - Darhsaiya, P.S. Kako, District - Jehanabad.

.... .... Petitioner/s

Versus

1. Smt. Sheela Devi W/o Sri Ram Poddar Resident of Mohalla - Rajapur, P.S. - Sri Krishnapuri, District - Patna.  
2. Smt. Pramila Devi W/o Sri Narayan Poddar  
3. Sri Narayan Poddar S/o Late Ramdeo Poddar  
4. Retesh Kumar @ Bunt S/o Sri Narayan Poddar  
5. Mukesh Kumar @ Chunnu S/o Sri Narayan Poddar All residents of Ganjpar Dalsingsarai Near Old State Bank of India, P.S. - Dalsingsarai, District - Samastipur.

.... .... Respondent/s

=====

**Appearance :**

For the Appellant/s : Mr. Pramod Kumar Singh

For the Respondent/s : Mr.

=====

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**

**ORAL JUDGMENT**

**Date: 12-07-2018**

1. The petitioner filed this civil miscellaneous petition against the order dated 13.03.2018 passed by Sub Judge-XI, Patna in Title Suit No.351 of 2010 by which the petition of the petitioner filed under Order I Rule 10 C.P.C. has been dismissed.

2. The admitted facts are that Smt. Sheela Devi, respondent No.1 filed title suit against respondent Nos.2 to 5 for specific performance of contract. The plaintiff stated that plaintiff and defendant No.1 are full sisters. Defendant No.2 is the husband of defendant No.1 and other defendants are sons of defendant No.1 and 2. Plaintiff and defendant No.1 with the consent of other defendants



jointly purchased 2 kathas of land situated in Mauja Muzaffarpur, Mainpura, Patliputra, District-Patna in the joint name of plaintiff and defendant No.1 through a registered sale deed in the year 1979 from Suresh Mahto and others and came in possession. Defendant No.1 being the joint purchaser is entitled to get 1 katha land. She fell in need of money and executed a deed of agreement to sale on 25.01.1984 on consideration of Rs.1,00,000/- but later on, the defendant no.1 refused to execute the sale deed. Thus, the suit was filed. The plaintiff also sought relief for restraining the defendants from changing the feature of the suit land by alienating, transferring or encumbering the suit land. The defendant-respondent Nos.2 to 5 appeared and denied the execution of the deed of agreement to sale. A title suit was dismissed for non-prosecution on 10.04.2012 and on 13.07.2012, the defendant No.1-respondent no.2 executed a deed of sale in favour of one Surya Bhushan and Jitendra after having received the entire consideration money. The title suit was again restored on 28.09.2013. During the pendency of the suit on 18.07.2017, Surya Bhushan and Jitendra Kumar executed sale deeds in favour of the petitioner on 18.07.2017 and 23.08.2017. The petitioner got his name mutated. The petitioner filed petition to implead him as defendant but the same has been dismissed by the order impugned.



3. Mr. Pramod Kumar Singh, learned counsel for the petitioner contended that the petitioner is bonafide purchaser from the vendees of defendant No.1. There was no restraintment order in the suit. The petitioner is a proper party and he is entitled to protect his interest and, therefore, the petitioner filed petition for impleadment. Learned counsel for the petitioner submits that in the case of Vidur Impex and Traders Pvt. Ltd. and Ors. v. Tosh Apartments Pvt. Ltd. and Ors. decided by the Apex Court reported in AIR 2012 Supreme Court 2925 it is held that in a suit for specific performance of contract, the petition for impleadment of transferee pendent elite is permissible, if the conduct of the transferee is above-board, and the petition for impleadment is made in time. It is submitted that on the facts, learned Sub Judge has committed jurisdictional error by not allowing the petitioner to be impleaded as defendant.

4. Mr. Vikas Kumar, learned counsel for the respondent No.1-plaintiff on the contrary submitted that the suit is for specific performance of contract. The petitioner is admittedly neither a necessary party nor a proper party. The Court does not require the petitioner to implead him as party-defendant as the presence of the petitioner is of no help for deciding the suit. The petitioner purchased the land in the year 2017 from the vendees of defendant No.1 during the pendency of the suit. Section 52 of the Transfer of Property Act



envisages that during the pendency in any court of any suit or proceeding 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 the decree or order which may be made therein except under the authority of the court and on such terms as it may impose. Learned counsel further submits that of course the first vendee of defendant No.1 purchased the land when the suit was dismissed for default but immediately thereafter the suit was restored. The defendant No.1 taking advantage of the dismissal of the suit for default transferred the land merely to defeat the rights of the plaintiff. Transferee pendente lite is binding by the judgment and decree passed in the suit in which the vendor is party. Learned counsel placed his reliance on the judgment of the Supreme Court reported in (1996) 5 Supreme Court Cases 539.

5. Having regard to the contention of both sides, the sole question that arises for consideration is “whether the petitioner is necessary or proper party to the suit”?

6. The necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by court. A proper party is a person whose presence would



enable the court to completely effectively and properly adjudicate upon all matters and in issues though he cannot be a person in favour of or against whom a decree is to be made. If a person is not a necessary or proper party the court does not have any jurisdiction to order his impleadment against the wishes of the plaintiff as the plaintiff is the dominus litis and the plaintiff is at liberty to choose a party against whom he seeks relief.

7. Admittedly, in the present case, Pramila Devi, defendant No.1 is the own sister of plaintiff-respondent No.1 and the plaintiff asserted that defendant No.1-respondent No.2 executed a deed of agreement to sale her share in the land after receiving consideration amount but later on defendant No.1 refused to execute the sale deed. The plaintiff also sought relief for restraintment of the defendants from alienating, encumbering or changing the nature of the suit land during the pendency of the suit. In a suit for specific performance of contract, the vendees of the defendant who failed to perform his part is not a necessary or proper party and, therefore, purchasers pendente lite cannot claim as a matter of right to be impleaded as party-defendant. In the case of Vidur Impex and Traders Pvt. Ltd. and Ors. v. Tosh Apartments Pvt. Ltd. and Ors. (supra), the Apex Court has held that in a suit for specific performance, the court can order for impleadment of a purchaser whose conduct is above-board and who



files application for being joined as party within reasonable time on his acquiring knowledge of the pending litigation but the facts of the case in hand show that the plaintiff filed the suit in the year 2012. When the suit was dismissed for default on 10.04.2012, the defendant who failed to perform her part under the agreement to sale immediately transferred the land to Surya Bhushan and Jitendra Kumar on 13.07.2012 but the suit was again restored on 28.09.2013. Surya Bhushan and Jitendra Kumar, the vendees of defendant No.1 sold the property to the petitioner on 18.07.2017 and 23.08.2017. Admittedly, the plaintiff and defendant have adduced their evidences before the petition of the petitioner for his impleadment in the suit and the suit is pending for argument. At this belated stage, I find that the petitioner should not be allowed to implead as party-defendant and, therefore, learned Sub Judge has rightly rejected the petition for impleadment.

Having considered the facts aforesaid, I do not find any jurisdictional error or illegality in the order impugned. Accordingly, the civil miscellaneous petition is dismissed as devoid of any merit.

**(Prabhat Kumar Jha, J)**

Saurabh/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | N/A        |
| Uploading Date    | 23.07.2018 |
| Transmission Date | N/A        |

