

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17826 of 2013

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1. Sukumari Devi W/O Krishna Ballabh Singh Resident Of Village- Bariarpur, P.S. & Sub Division- Ballia, District- Begusarai
 2. Sunaina Devi W/O Sri Ram Nandan Singh Resident Of Village- Bariarpur, P.S. & Sub Division- Ballia, District- Begusarai
 3. Shiv Shankar Singh S/O Late Alok Singh Resident Of Village And P.O. Sadanandpur P.S. And Subdivision Ballia, District Begusarai
 4. Savitri Devi W/O Sri Sahdeo Singh Resident Of Village- Bariarpur, P.S. & Sub Division- Ballia, District- Begusarai
 5. Sahdeo Singh S/O Late Baudhu Singh Resident Of Village- Bariarpur, P.S. & Sub Division- Ballia, District- Begusarai

.... Petitioners

Versus

Ramanand Prasad Singh Son Of Late Ram Bilash Singh Resident Of Village Sadanandpur, Sub Division Ballia, District Begusarai

.... Respondent

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Appearance :

For the Petitioners : Mr. Ravindra Kumar, Advocate

For the Respondent : Mr. Mrigank Mauli, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

6 05-03-2018 This application has been filed for quashing the order dated 22.04.2013 passed by learned Additional District Judge-III, Begusarai in Title Suit No.02 of 2009 whereby and whereunder the prayer of the petitioners for impleading the petitioners as party to the suit was rejected.

2. Heard learned counsel for the petitioners and the respondents.

3. The facts giving rise tot his application are that one Babu Anugrah Singh had a son Shyama Kant Singh and two daughters Awadh Bihari Devi and Anapurna Devi. Out of them Shyama Kant Singh died in the year 1947 in jointness with his father and Awadh Bihari Devi died in the year 1967 leaving



behind her daughter, namely, Shobha Devi. Ram Anugrah Singh died in the year 1971 leaving behind his widow Jagtarni Devi and three daughters Anapurna Devi, Shobha Devi and Pancha Devi. The said Anpurna Devi sold an area of 1 bigha 19 kathas and 10 dhurs to the petitioners by virtue of registered sale deed dated 23.09.2010 under survey plot no.36 of Khata no.3 and survey plot no.34 under Khata no.2. She further sold 1 bigaha 15 kathas and 10 dhurs land of plot nos.34 and 36 to Savitri Devi and Sahdeo Singh who are petitioner nos.4 and 5. The said purchasers got their names mutated in revenue record and after paying rent they are claiming to be in physical possession of the land. A Probate Case No.05 of 2008 has been filed by Ramanand Prasad Singh on the basis of will dated 20.05.2006 purported to be executed by late Pancha Devi widow of late Shyama Kant Singh. Another Probate Case bearing no.06 of 2009 has been filed by the Principal Incharge of late Pancha Devi, Shyamakant Inter College for grant of Probate on the basis of Will dated 01.07.2006 purposed to be executed by Most. Pancha Devi. The petitioners claiming to be bonafide purchasers from one of the sharer, namely, Anapurna Devi filed a petition for impleading them as party to the suit which after hearing was rejected.

4. The contention of learned counsel for the petitioners is that after sale in favour of these petitioners, their vendor might collude with the petitioners of probate case or their vendors may



left taking interest in prosecuting suit. They are bonafide purchasers and so they are necessary party to the suit. The court below without considering the case petitioners has rejected the prayer. In this regard, learned counsel for the petitioners cited a ruling reported in 2005 Vol. 11 SC cases 4003 and 1996 (5) SC cases 359.

5. On the other hand, the learned counsel for the respondents submitted that the petitioners are stranger to the issue involved in this case. This case relates to a will executed by Most. Pancha Devi in favour of the respondent. The genuineness of Will has to be determined by the court below. The petitioners have no concern with the Will in question. In this regard, the learned counsel for the respondents cited ruling reported in (1996) 5 SC cases page 539. The Hon'ble Apex Court at para-5 has observed that a necessary party is one whose presence is absolutely necessary and without whose presence the issue cannot effectually and completely be adjudicated upon and decided between the parties. A proper party is one whose presence would be necessary to effectually and completely adjudicate upon the disputes. In the case in hand, the petitioners claimed to be purchaser from the OP of Title Suit No.02 of 2009 and so they cannot be said to be either necessary or proper parties to the suit. The primary relief is based on the basis of the will executed by the deceased Pancha Devi. The applicant has sought relief for probate on the basis of deed of Will. The Hon'ble Apex Court has further observed that :-

[Section 52](#) of the Transfer of Property Act envisages that "during the pendency in any Court having authority within the limits of India 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 right 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. " It would, therefore, be clear that the defendants in the suit were prohibited by operation of [Section 52](#) to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the Court. Admittedly, the authority or order of the Court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of lie pendens by operation of [Section 52](#). Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit."

6. The court below while rejecting the prayer of the petitioners has rightly observed that the petitioners being purchaser from Anpurna Devi during the pendency of the suit are neither necessary party to the suit nor proper party to the suit. The intervenor respondent being stranger to the suit cannot challenge the legality or validity of the will in question.

7. In view of the above facts, the court below has not committed any jurisdictional error in rejecting the prayer of the petitioners. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

Brajesh Kr./-AFR

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