

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1729 of 2014

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Ruby Singh W/O Prem Kumar Singh, resident of Mohalla Lal Kothi Road, Police Station and District Katihar.

.... Petitioner

Versus

1. Smt. Sona Devi W/O Sri Mahesh Ram D/O Marai Lal, R/O Mohalla Anathalaya Road, Katihar, P.S. and District - Katihar, at present residing at Bagdulhan P.O. Hajipur P.S. Hajipur District – Vaishali.
2. Smt Rita Devi W/O Ganga Prasad D/O Manik Lal Rajak, resident of mohalla Lal Kothi Road, Police Station and District Katihar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Jibendra Mishra, Advocate
For the Respondent/s : Mr. Bholu Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 16-08-2018

This writ application has been filed for quashing the order dated 27.09.2013 passed by Subordinate Judge II, Katihar in Title Suit No.101 of 2003 whereby and whereunder the prayer of this petitioner to implead her as plaintiff was rejected.

2. Heard learned counsels for the petitioner and the respondents.

3. The respondent no.1 Smt. Sona Devi filed the aforesaid suit on the file of Subordinate Judge, Katihar against the respondent no.2 for declaration that the deed of gift nos.2708/95 and 2709/95 purported to be executed by plaintiff in favour of defendant are void *ab-initio* as the same were not executed by the plaintiff. The plaintiff



further sought relief that the defendant has not acquired any right and title over the suit land on the basis of forged fabricated deeds of gift. It appears that during pendency of the suit, the plaintiff executed sale deed no.2830 dated 11.02.2011 in favour of this petitioner on the basis of which the purchaser filed a petition for impleading her as co-plaintiff to the suit.

4. The contention of learned counsel for the petitioner is that the petitioner has purchased the entire suit property from the plaintiff. The plaintiff had not executed any deed of gift in favour of defendant. It was the husband of defendant who fraudulently brought into existence the registered deed of gift by a different lady impersonating herself as the plaintiff. The plaintiff having come to know about the fraudulent act of the defendant has filed the case. It has been submitted that after execution of sale deed in favour of this petitioner, the plaintiff has left taking interest in prosecuting the suit. After purchase the petitioner has stepped into the shoes of plaintiff and so a valuable right has accrued and she has right to proceed with the said title suit.

5. On going through the impugned order as well as case of both the parties, I find that the court below proceeded on wrong premise that the purchase made by the petitioner is hit by the doctrine of *lis pendnes* as provided under Section 52 of the T.P. Act. In this



regard I would like to refer the observation of Hon'ble Apex Court given in a case of Amit Kumar Shaw & Anr. Vs. Farida Khatoon & Anr. reported in A.I.R. 2005 Supreme Court 2209. The Hon'ble Apex Court at paragraph 16 has observed as follows:-

“The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under Order XXII Rule 10 an alienee pendente lite may be joined as party. As already noticed, 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. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.”

6. In the case in hand I find that the respondent no.1 who has sold her entire interest in the suit property to the petitioner has admitted the claim of the petitioner. Her learned counsel has fairly conceded to the submissions of learned counsel for the petitioner.



7. In view of above discussions and proposition of law as laid down by the Hon’ble Apex Court, the impugned order refusing to implead the petitioner as party to the suit is set aside and this writ application is allowed. The petitioner is ordered to be impleaded as defendant to the suit.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.08.2018
Transmission Date	

