

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.491 of 2012

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1. Janardan Singh Son of Late Keshwar Singh, resident of village - Simari Jaitya, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
 2. Baliram Singh Son of Late Nathun Singh, resident of village - Simari Jaitya, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
 3. Dhananjay Singh Alias Munna Singh S/o Sri Baijnath Singh, resident of village - Simari Jaitya, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
 4. Gajendra Singh Son of Late Munshi Singh, resident of village - Simari Jaitya, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad.

.... Petitioner/s

Versus

1. Sidheshwar Singh S/o Late Shambhu Singh, resident of village - Simari Jaitya, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
2. Shital Singh Son of Late Shambhu Singh, resident of village - Simari Jaitya, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
3. Awadhesh Singh Son of Late Shambhu Singh, resident of village - Simari Jaitya, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
4. Lallan Singh Son of Late Shambhu Singh, resident of village - Simari Jaitya, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
5. Vijay Singh Son of Late Shambhu Singh, resident of village - Simari Jaitya, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
6. Biresh Singh Son of Late Shambhu Singh, resident of village - Simari Jaitya, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
7. Shanti Devi Wife of Late Shambhu Singh, resident of village - Simari Jaitya, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
8. Chandrawati Kuer Wife of Late Suba Singh, resident of village - Gajhanda, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
9. Kanti Kuer Wife of Late Om Prakash, resident of village - Gajhanda, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
10. Pramod Kumar Singh Son of Late Suba Singh, resident of village - Gajhanda, P.O. Nabinagar Road, P.S. Nabinagar, District - Aurangabad
11. Lalmuni Devi Wife of Late Rajballabh Singh, resident of village - Karthania, P.S. Sasaram, District Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rama Kant Singh, Adv.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 30-04-2018

The petitioners have filed this application for quashing the



order dated 16.09.2011 passed by learned Munsif, Aurangabad in Title Suit No. 93 of 1982 whereby and whereunder the learned court below dismissed the petition filed by the petitioners under Order I Rule 10 (2) of Code of Civil Procedure.

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

3. The respondents-plaintiffs filed the aforesaid suit against Shanti Devi (respondent no. 7) and Suba Singh (defendant no. 1) for declaration that the deed of gift dated 04.08.1982 executed by Shanti Devi in favour of Suba Singh as illegal. The defendants appeared and filed their written statement denying the case of the plaintiffs. Suba Singh died on 18.12.2008 leaving behind his widow and sons who were substituted in his place. Suba Singh executed two sale deeds in favour of Lalmuni Devi (respondent no. 11) with respect to 1.83 decimal land of plot Nos. 173, 174, 194 and 195 in the year 1988. The plaintiffs filed a petition and impleaded the said Lalmuni Devi as defendant to the suit. The plaintiffs filed an injunction petition praying therein to restrain Suba Singh from transferring the disputed land till the disposal of the suit. The suit was dismissed in default on 18.01.2006. Thereafter, the plaintiffs filed a restoration petition on 09.01.2007 and the suit was restored on 22.05.2007. After dismissal of suit, the petitioners purchased the land from the defendant on



15.05.2007 and filed petition on 12.11.2007 for impleading them as party to the suit.

4. The learned counsel for the petitioners submits that the petitioners are bona fide purchasers from Suba Singh who was admittedly one of the co-sharers. The said Suba Singh had executed two sale deeds in favour of Lalmuni Devi with respect to 1.83 decimal land of plot Nos. 173, 174, 194 and 195. On the prayer of plaintiffs, the said Lalmuni Devi was impleaded as defendant to the suit. The case of these petitioners stands on similar footing as they also purchased the land from Suba Singh. After death of Suba Singh, the petitioners have become necessary party to the suit to protect their interest in view of settled principles of law as laid down by Hon'ble Apex Court in 2014 (2) P.L.J.R. 125 (Md. Kamaluddin Vs. Laxmi Devi & Ors.).

5. The learned counsel for the respondents on the other hand opposed the submission. It has been submitted that the petitioners during the pendency of miscellaneous case which was filed for restoration of original suit, have purchased the disputed land and on restoration of suit they filed petition for impleading them as party to the suit. The court below considering the petition filed at the belated stage, has rightly rejected and the said order does not require any interference.



6. The provision as contained in Order I, Rule 10(2) of the code of civil procedure for the purpose of impleadment of transferee *pendente lite* as party to a suit came to be considered by Supreme Court in case of Thomson Press (India) Ltd. Vs. Nanak Builders and Investors Private Limited & Ors. reported in (2013) 5 SCC 411. The Supreme Court has taken note of the observations made in case of Sanjay Verma vs. Manik Roy. The Hon'ble Supreme Court after considering section 52 of the Transfer of Property Act and Order I, Rule 10(2) of the Code of Civil Procedure has held that transfer of suit property *pendente lite* is not void *ab initio* but remains subservient to the pending litigation. In the case of Thomson Press (India) Ltd. Vs. Nanak Builders and Investors Private Limited & Ors., the purchase of the property was made in spite of there being stay of alienation and even then the Supreme Court held that the transferee *pendente lite* would be impleaded as party to the suit so as to protect his interest. The Supreme Court in that case quoted with approval previous Supreme Court judgment in case of Khemchand Shankar Choudhari vs. Vishnu Hari Patil reported in (1983) 1 SCC 18 to the effect that the position of a person on whom any interest has devolved on account of a transfer during pendency of a suit or a proceeding is somewhat similar to the position of an heir or legatee of a party who dies during the pendency of the suit or proceeding. The Supreme



Court in paragraph 55 of the said judgment (Thomson Press (India) Ltd. Vs. Nanak Builders and Investors Private Limited & Ors.) has observed that any such heirs, legatee or transferee could not be turned away when he applies for being added as a party to the suit. While summing up, the Supreme Court held, in the facts and circumstances of that case, that as the transferee had purchased the entire estate, he was entitled to be added as party (defendant) to the suit. However, as a result of his addition, Court held in that case, the appellant should raise and pursue only such defences as are available and taken by the original defendants and not other.

7. In view of above settled principles of law as discussed above, I find that the court below has committed error in refusing to implead the petitioners as party to the suit. The impugned order dated 16.09.2011 passed by Munsif, Aurangabad in Title Suit No.50 of 1982 is not sustainable and is set aside.

8. This writ application is accordingly allowed and the court below is directed to implead the petitioners as party to the suit.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.05.2018
Transmission Date	

