

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14913 of 2014

=====

Saroj Devi wife of Late Hareram Singh, resident of village - Manjhaul, Police Station - Cheria Bariyarpur and District – Begusarai.

.... Petitioner/s

Versus

1. Bina Devi Wife of Ramashish Prasad Singh, resident of village - Manjhaul, Police Station - Cheria Bariyarpur and District - Begusarai
 2. Pramod Mahton @ Ram Shankar Mahton son of Late Ramdeo Mahton
 3. Prabhas @ Ram Prabesh Mahton son of Late Harihar Mahton
 4. Shiv Sagar Mahton @ Baua Mahton son of Late Lako Mahton
- Sl. nos. 2 to 4 are residents of village - Manjhaul, Police Station - Cheria Bariyarpur and District – Begusarai.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Partha Sarthy

For the Respondent/s :

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-08-2018

This application has been filed for quashing the order dated 19.06.2014 passed by learned Munsif-I, Manjhaul, District-Begusarai in Title Suit No. 186 of 1988 whereby and whereunder the court below refused to implead the petitioner as party to the suit under the provision of Order 1 Rule 10 read with section 151 of Code of Civil Procedure.

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

3. It appears that the respondent no.1 along with this petitioner-Saroj Devi filed the aforesaid T.S No. 186 of 1988 for



declaration of their title over the land mentioned in schedule-I of the plaint. Subsequently, an amendment petition allegedly was filed by both the plaintiffs on 16.06.1998 which was allowed as per order dated 13.08.1998. The respondent no. 1 i.e. plaintiff no. 1 filed another amendment petition on 06.12.2013 to insert the sentence to this effect that Saroj Devi (this petitioner) being farzidar co-purchaser of suit land executed an Yaddast Ladawinama on 13.05.1985. On the prayer of plaintiff no. 1, the name of this petitioner was deleted.

4. The learned counsel for the petitioner submits that the husband of petitioner and the husband of respondent no. 1 were full brothers and they jointly purchased the land in question by virtue of registered sale deed dated. 29.09.1984. The petitioner and respondent no. 1 were in possession over the said land. The respondent no. 1 fraudulently filed the aforesaid suit mentioning this petitioner as plaintiff no. 2 in the said plaint. The petitioner neither executed any Wakalatnama nor signed the plaint nor presented the same before the court below. The petitioner recently learnt about the pendency of the suit and so a petition under Order 1 Rule 10 read with section 151 of Code of Civil Procedure was filed praying therein to implead the petitioner as party to the suit which was rejected by the court below. The petitioner being proper party ought to have been impleaded as party to the suit. The claim of respondent no. 1 as absolute owner is



wrong, as the alleged deed of Ladawinama is forged and fabricated document.

5. The learned counsel for the respondents on the other hand submits that after execution of Ladawinama (deed of relinquishment), this petitioner has no concern over any portion of the land in question. The plaintiff-respondent no. 1 has not sought any relief against this petitioner and she has been set up by other defendants in order to prolong the disposal of the suit. It has been submitted that the order under which the name of this petitioner has been deleted and the amendment has been allowed, have not been challenged by this petitioner and so it has become final and is binding on the petitioner.

6. On going through the impugned order as well as documents on record I find that the respondent no. 1 being plaintiff initially filed the suit along with this petitioner claiming title of both the plaintiffs on the basis of registered sale deed dated 29.09.1984. Subsequently, the respondent no. 1 claimed that the petitioner had executed deed of relinquishment. I find that the present plaint was filed after the execution of alleged relinquishment deed. The petitioner denies her signature either on the plaint or on the wakalatnama. The registered sale deed, on the basis of which suit has been filed stands in the name of this petitioner also.



7. In this regard, I would like to refer ruling reported in (2007) 10 SCC 82 (Sumtibhai vs. Paras Finance Co.) wherein the Hon’ble Apex Court at para 14 has observed as follows:

“In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute.”

8. In the case in hand, I find that the petitioner prima facie has been able to show her title over the suit property and so she appears proper party to the suit.

9. In view of above discussion, the impugned order refusing to implead the petitioner as party to the suit is set aside and this application is allowed. The petitioner is directed to be impleaded as party to the suit.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21/08/2018
Transmission Date	N/A

