

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19862 of 2013

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1. Umesh Kumar S/O Late Rama Nand Prasad Resident Of Village- Jam Bazar, P.O And P.S- Jamo Bazar, District- Siwan.

2. Oshihar Kumar Soni S/O Sri Pramod Soni Resident Of Village- Jam Bazar, P.O And P.S- Jamo Bazar, District- Siwan.

3. Mukesh Kumar S/O Sri Parmanand Prasad Sah Resident Of Village- Jam Bazar, P.O And P.S- Jamo Bazar, District- Siwan.

4. Sanjay Bhushan S/O Sri Nathuni Sah Resident Of Village- Jam Bazar, P.O and P.S- Jamo Bazar, District- Siwan.

.... Petitioners

Versus

1. Smt. Krishnawati Devi W/O Lalan Giri Resident Of Village- Jamo Mathia, P.O And P.S- Jamo, District- Siwan.

2. Smt. Heeramani Devi W/O Yogendra Prasad Resident Of Village- Jamo Mathia, P.O And P.S- Jamo, District- Siwan.

3. Premchand Prasad S/O Late Banarshi Prasad Resident Of Village- Jamo Mathia, P.O And P.S- Jamo, District- Siwan.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 23-04-2018

This writ application has been filed for setting aside the order dated 20.06.2013 passed by learned Subordinate Judge-I, Siwan in Title Suit No.192 of 2010 whereby and whereunder the petition filed on behalf of these petitioners for impleading them as party to the suit under Order 1 Rule 10 of C.P.C. was rejected.

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

3. The respondent nos.1 and 2 filed the aforesaid suit for declaration of their title and possession over the suit land mentioned



in Schedule I and II of the plaint and injunction to restrain the defendants from causing any interference in their peaceful possession. The petitioners having come to know about the pendency of the suit, filed intervener petition which after hearing was rejected.

4. It has been submitted that the plaintiffs filed the aforesaid suit on 15.03.2010 and when it was pending for office report, the petitioners purchased the entire suit land from the real owner by virtue of registered sale deed dated 19.03.2010. The said sale deed was executed immediately after three days of institution of the suit. The petitioners had no knowledge about the pendency of the suit. The suit land was acquired by the vendor of the petitioners in the year 1976. The petitioners have purchased entire suit land from the defendants and so they have right to protect their interest. The vendors of these petitioners appeared and filed written statement on 02.08.2010 in which the defendants disclosed that they have already executed sale deed in favour of these petitioners with respect to 6 katha and 10 dhoors land. In spite of information given to the plaintiffs, no step for impleading these petitioners was taken by the plaintiffs. These petitioners are necessary party to the suit in view of well 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, submits that the original owner Jeonandan Sah had three sons.



Out of them, his third son executed sale deed in favour of plaintiffs on 19.11.2009 with respect to an area measuring 5 katha 8 dhoor. The intervener petitioners claim to have purchased the land measuring 6 katha 10 dhoor which is beyond the share of the vendor's vendor. The vendors of the petitioners are already on record and so they are competent to protect their interest and so no prejudice would be caused to the petitioners. It has been further submitted that the petitioners have purchased the land during pendency of the suit without taking permission from the court concerned and so they cannot be impleaded as party to the suit.

6. Perused the documents on record. It appears that both the parties claim land from two different co-sharers who are full brothers. The plaintiffs purchased the land from younger brother. The vendors of the petitioners purchased land from another brother. Both are claiming title on the basis of their respective sale deeds. The vendors of these petitioners had purchased the land in the year 1976. The plaintiffs have not challenged the genuineness of said sale deed which was executed for about more than 30 years ago. It is not in dispute that the vendors of these petitioners had no title over the suit land. The dispute is with respect to an area allotted in the share of the vendors of the plaintiffs and the defendants.

7. 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 (supra), reliance upon which has been placed by learned counsel for the respondents. The 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. (supra), 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.

8. In view of above settled principles of law as discussed above, I find that the learned court below has committed error in refusing to implead the petitioners as party to the suit. The said order is not sustainable and is accordingly set aside. This writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	27.04.2018
Transmission Date	

