

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23685 of 2013

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1. Ramfool Singh
 2. Devendra Singh
 3. Birendra Singh

All sons of late Chandrika Singh, R/o Baraipatti Tole Harpur Pragma Pachlakh,
P.S. Mirganj, District- Gopalganj.

.... Petitioner/s

Versus

1. Sukhdeo Singh Husband of late Radhika Devi, residents of village Baraipatti Tole Harpur, Pragma Pachlak, P.S.- Mirganj, District- Gopalganj.
2. Bishesar Singh S/o Chandrika Singh, cast Awadhia By Profession Cultivator R/o Village- Nathuchap Pragma- Pachlakh, P.S. & District- Siwan.
- 3(a) Janak Prasad Singh Son of late Sheo Prasad Singh
- 3 (b) Om Prakash Prasad Singh Son of late Sheo Prasad Singh
- 4(a) Mudrika Singh Both Son of late Harilal Singh
- 4(b) Janardan Prasad Singh, Both 3 & 4 by profession Cultivator residents of village- Baraipatti Tole Harpur, Pragma- Pachlakh, P.S.- Mirganj, P.O.- Matihani Madho, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Singh, Adv.
For the Respondent/s : M/s. Lal Bahadur Singh, Md. Sufiyan and Shailendra
Kumar Diwedi, Advocates

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 23-08-2018

This application has been filed for quashing the order dated 20.09.2013 passed by Adhoc Additional District Judge-II, Gopalganj in Title Appeal No. 16 of 1985 (arising out of Title Suit No.177 of 1978) whereby and whereunder prayer of the petitioners to implead them as appellant was rejected.

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



3. One Radhika Devi filed Title Suit No. 177 of 1978 against the respondent nos. 2 to 4 for declaration that the deed of gift dated 26.05.1977 and two registered sale deeds dated 26.05.1977 alleged to be executed by plaintiff in favour of the defendants were forged and fabricated and without consideration and all three deeds are not binding on the plaintiff. The suit was decreed in part. The deed of gift executed by the plaintiff was declared invalid, but the suit with respect to declaration of two sale deeds was dismissed. The plaintiff-Radhika Devi filed Title Appeal No. 16 of 1985 against the said judgment whereunder the court below refused to declare the two sale deeds as forged and fabricated. During the pendency of the appeal, Radhika Devi died and her husband was substituted. It appears that after declaration of deed of gift as illegal and fraudulent, the said Radhika Devi executed deed of gift on 20.05.1987 in favour of the father of petitioners and put him in possession over the gifted property. On the strength of said deed of gift Chandrika Singh filed petition to implead him as party to the appeal. During pendency of said petition Chandrika Singh died and his sons who are petitioners before this Court filed a petition under Order 22 Rule 10 read with Order 1 Rule 10 and section 151 CPC to implead them as appellant. The respondents filed an objection and the court below after hearing the petition refused to implead the petitioners as appellant. The



original appellant and her husband admittedly have died during the pendency of the appeal. These petitioners claim interest in the suit property as original appellant/plaintiff executed deed of gift in favour of the father of the petitioners (since dead).

4. On going through the impugned order as well as case of both the parties I find that the father of these petitioners filed petition for his substitution in place of deceased appellant as he acquired right, title and interest in the suit property. 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.”

5. In view of above discussions and the principle laid down by the Hon’ble Apex Court, these petitioners appear proper party to the appeal in order to protect their interest in the suit property. The court below has thus committed error in refusing to implead the petitioners as appellant. The impugned order is accordingly set aside and this writ application is allowed. The petitioners are ordered to be substituted/impleaded as appellant.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27/08/2018
Transmission Date	N/A

