

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1257 of 2018

1. Pappu Sah, Son of Late Mahavir Sah.
2. Basant Singh, Son of Late Aash Narayan Singh,
Both residents of Village Khushi Tola, P.O.- Bhithan, P.S.- Bairiya, District-
West Champaran.

... .. Petitioners/Interveners

Versus

1. Sanjay Prasad, Son of Sri Murat Prasad, resident of Mohalla- Ilam Ram
Chouk, Gunj No. 1, Ward No. 17, Bettiah Town, P.S.- Bettiah Nagar,
District- West Champaran.

.... Opposite Parties/Plaintiff

2. Masomat- Prema Kunwar, Wife of Late Chhedi Raut.
3. Sanju Devi, D/o Late Chhedi Raut,
4. Seema Devi, D/o Late Chhedi Raut,
5. Ajay Patel, Son of Late Chhedi Raut,
6. Arun Kumar, Son of Late Chhedi Raut,
All resident of Village- Hat-Saraiya, Tola-Chouturya, P.O.- Bettiah, P.S.-
Bettiah Nagar, District- West Champaran.

... .. Respondents/Defendants

Appearance :

For the Petitioners : Mr. Shyam Sunder Pandey, Advocate
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 05-09-2019

Heard learned counsel for the petitioners.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for setting aside the order dated 25.04.2018 passed by the learned Sub Judge-VI, Bettiah, West Champaran in Title Suit No.25 of 2011 whereby an application under Order 1 Rule 10 of the Code of Civil Procedure (for short 'CPC') filed by the petitioners on 12.10.2017 has been rejected.



3. Learned counsel appearing for the petitioners submitted that the trial court has erred in law as also on facts in passing the order impugned dated 25.04.2018. He contended that it failed to appreciate that the petitioners are necessary parties in the suit for specific performance of contract, as in respect of the same land, which is in dispute, an agreement to sale was made by the vendor with the petitioners on 04.09.2017. According to him, the objection raised by the opposite party-plaintiff to the addition of the petitioners-interveners as necessary parties is unsustainable. He pleaded that the interveners-petitioners are also basing their claim over the suit property on the basis of agreement to sale made in their favour. In that view of the matter, the trial court ought to have allowed the application filed by the petitioners in order to avoid multiplicity of litigation. He urged that the impugned order rejecting addition of the petitioners, a subsequent purchaser with whom agreement to sale was entered into as party in the suit suffers from jurisdictional error.

4. The facts of the case, in brief, are that the opposite party no. 1 (plaintiff) had filed Title Suit No.25 of 2011 in the court of Sub Judge-1st, Bettiah, West Champaran praying therein for specific performance of contract in respect of the suit property appertaining to Khata No.160, Khesra No.632 having an area of 6 Katha and 12 dhoors of land in village-Hat Saraiya, Thana No.140,



Anchal-Bairiya, District-West Champaran. He had pleaded that on 20.06.2008 one Chhedi Raut (the original defendant) proposed to sale the suit land to the petitioners, as he was in need of money for the purpose of marriage of his daughter. On negotiation, the plaintiff agreed to purchase the suit land for a consideration amount of Rs.3,60,500/- out of which he paid Rs.2,50,000/- as advance and undertook to pay Rs.1,10,500/- as also the registration fee within two years from the date of entering into the agreement. The said Chhedi Raut agreed to execute agreement to sale on receipt of Rs.2,50,000/- and accordingly on 23.06.2008 after receiving the initial payment of Rs.2,50,000/- executed a registered agreement to sale in respect of the suit land. Thereafter, the plaintiff repeatedly requested Chhedi Raut to receive Rs. 1,10,000/- as agreed for sale of the suit land in terms of the agreement to sale and execute the sale deed, but on one pretext or the other he did not execute the sale deed. Accordingly, a legal notice was sent on 31.12.2010 to Chhedi Raut and, thereafter, the suit was filed. Subsequently, upon death of Chhedi Raut, his heirs and legal representatives were impleaded as defendants.

5. In the said suit, the petitioners filed an application on 12.10.2017 under Order 1 Rule 10 of the CPC for impleadment as parties in the suit. They contended that since they were not aware of the pendency of the suit, they also entered into an agreement to sale in respect of the suit property with Jhauri Devi, Khedni Devi and



Ramratia Devi in whose share the suit property came and after their death, it came into the share of their legal heirs namely, Chandar Raut, Langtu Raut and Rambachan Raut. His contention was that he had entered into a registered agreement to sale on 04.09.2017 and had handed Rs.18,75,000/- as initial payment for the suit property and agreement were prepared to pay the rest amount of Rs.6,00,000/-, but as the heirs of Jhauri Devi, Khedni Devi, and Ramratia Devi failed to execute the sale deed in terms of the agreement, they have also interest in the property and they are necessary parties to the suit.

6. Having considered the submissions made by the petitioners, the trial court vide impugned order dated 25.04.2018 rejected the application filed under Order 1 Rule 10 of the CPC on the ground that the suit for specific performance of contract is of the year 2011 whereas the case of the petitioners is based on a agreement to sale entered into on 04.09.2017. The parties with whom the petitioners entered into the agreement are different than the parties to the suit in question. The petitioners may have a right to bring a suit for specific performance of contract against the parties with whom they have entered into agreement, but they can not be considered to be a necessary party in a suit between the persons with whom he had no transaction. The trial court has further held that in the suit



property they have no title or interest and, hence, their impleadment are not necessary.

7. Having regard to the facts and circumstances of the case, I am of the opinion that the trial court has neither erred on law nor on facts. The order impugned does not suffer from any jurisdiction error. The petitioners can not be made a party in a suit for specific performance of contract in respect of a property in which the vendor is not the same, who had entered into agreement with the petitioners. The claim of the petitioners that Jhauri Devi, Khedni Devi and Ramratia Devi are the actual title holders in whose possession or in whose share the suit property came can not be a subject matter of a suit for specific performance of contract.

8. The application lacks merit.

9. In that view of the matter, I am not inclined to interfere with the order passed by the trial court in supervisory jurisdiction under Article 227 of the Constitution of India.

10. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.09.2019
Transmission Date	NA

