

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.434 of 2019

Bhikhari Bhagat son of Ram Nandan Bhagat @ Nandan Bhagat Resident of Village-Harchanda, P.S.-Kanti, District-Muzaffarpur.

... .. Petitioner

Versus

1. Baijnath Bhagat son of Late Ramjee Bhagat, Resident of Village-Harchanda, P.S.-Kanti, P.O.-Panapur, Karait, District-Muzaffarpur.
... .. Respondent 1st set-Plaintiff
 2. Shanti Devi @ Shiyawati Devi wife of Phuldeo Bhagat, Resident of Bhorai, P.O.-Partopgarh, District-East Champaran, Motihari.
 3. Shiya Devi wife of Mohan Bhagat, Resident of Village-Kanti, P.S.-Kanti, District-Muzaffarpur
.... .. Respondents
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Appearance :

For the Appellant/s : Mr. Krishna Kant Singh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 26-07-2019

Heard learned counsel for the petitioner and
perused the materials available on record.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 05.11.2018 passed by the learned Munsif, West, Muzaffarpur in Partition Suit No.177 of 1993 whereby the petition dated 11.04.2018 filed on behalf of the petitioner for adding name of Krishna Devi in the column of defendant has been rejected.

3. Mr. Krishna Kant Singh, learned counsel for the petitioner submitted that the trial court was not justified in rejecting the petition filed under Order 1, Rule 10 of the Code of Civil Procedure (for short 'CPC') on behalf of the petitioner as



Krishna Devi is a necessary party and the court below ought to have impleaded her as a defendant in the present case. According to him, rejection of the petition filed by the petitioner would lead to failure of justice.

4. Short facts giving rise to the present application is that one Baijnath Bhagat had filed Partition Suit No.177 of 1993 with respect to Khata No.186, RSP No.1217 and 1218 admeasuring 0.29 decimal praying for the following reliefs:-

(a) That on adjudication of the facts as stated above the preliminary decree for partition of plaintiff's 1/2 share in schedule-I of the plaint be passed in favour of the plaintiff against the defendants.

(b) That after passing of preliminary decree a separate Patti for plaintiff's 1/2 share be carved out by appointment of survey knowing Advocate Commissioner and the plaintiff be put in Khas possession over the Patti. Thus, carved out for him.

(c) That the cost of the suit be awarded to the plaintiff against the defendants.

(d) That a decree, if any, the plaintiff be found entitled be passed.



5. The petitioner was made defendant no.3 in the suit and he filed written statement. Thereafter, the evidence on behalf of the plaintiff was closed and the case proceeded to the next stage for examination of defendants.

6. At this stage, an application was filed by the petitioner stating therein that the disputed land is self acquired property of the defendant no.3 and Jamabandi is also running in his name. The plaintiff has obtained sale deed with respect to RSP No.1217 in the name of his wife, namely, Krishna Devi from Siyawati Devi and Phulmati Devi on 07.12.2017. So, the name of Krishna Devi be also added as a defendant. The petitioner pleaded that the transferee *pendente lite* is a necessary party to the suit. Since Krishna Devi is a purchaser *pendente lite*, she is a necessary party to the suit. He also tendered the certified copy of sale deed dated 07.12.2017 in the name of Krishna Devi in order to show that during pendency of the suit, the land was purchased by Krishna Devi wife of plaintiff Baidnath Bhagat.

7. Per contra, the plaintiff pleaded that the petition filed by the petitioner is neither maintainable in law nor on facts and the defendant no.3 has no right or *locus standi* to file a petition for impleadment of Krishna Devi as defendant. He



further pleaded that the petition has been filed to create escape for not adducing evidence in spite of several adjournments taken by the petitioner defendant no.3 on frivolous grounds. It was also pleaded that the plaintiff is a *dominus lites* and is free to choose his opponent and he cannot be forced to add or subtract the party against his will. On such pleadings, the plaintiff contended that the transferee, during pendency, is neither necessary party nor there is any necessity to implead him, as the said purchaser has no independent claim, but claims under her vendor after the result of the suit.

8. Having considered the submissions advanced on behalf of the parties, the trial court rejected the application dated 11.04.2018 filed by the petitioner.

9. Regard being had to the facts pleaded before me and the materials on record, I am of the opinion that the trial court is right in its conclusion and has given sound reasonings for rejection of the application filed by the petitioner. The suit is for partition of the year 1993. After closure of the plaintiff's evidence, at much belated stage, the application was filed by the petitioner before the trial court to add Krishna Devi wife of the plaintiff as defendant as she had acquired 4.5 decimal land from Siyawati Devi wife of Mohan Bhagat and Phulmati Devi wife of



Phuldeo Bhagat of Khata No.185, Khesra No.1217. The vendors of Krishna Devi are already defendant no.1 and 1/a of the suit. Impleading a transferee *pendente lite* in the partition suit must be for a substantial cause. In the present suit, Krishna Devi had purchased the land in dispute from Siyawati Devi and Phulmati Devi, who are daughters of the original defendant no.1 and are defendant no.1 and I/a in the suit. Apparently, Krishna Devi has no independent claim. The vendors are party to the partition suit and any decision passed in the suit with regard to share of the parties will bind Krishna Devi. It is well settled proposition of law that transferee *pendente lite* without leave of the court cannot as of right seek impleadment in the suit, as he would be bound by the decree in the suit in view of the ratio laid down in Section 52 of the Transfer of Property Act.

10. Keeping in mind the discussions made above, I find no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.08.2019
Transmission Date	

