

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8937 of 2013

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Krishna Mohan Bhagat Son Of Nathuni Prasad Bhagat Resident Of Village - Sangrampur, Pargana - Sahroi, P.O. and P.S. - Sangrampur, District - Munger

... .. Petitioner/s

Versus

1. Dr. Sarug @ Saryug Prasad Bhagat, S/o Late Surajbhan Prasad Bhagat, Resident of Village-Sangrampur, P.O.-Sangrampur, District-Munger. At present residing at Kotwali, Munger, PO & District-Munger, retired Medical Officer.
2. Dr. Vijay Kumar Bhagat Son Of Dr. Sarug Prasad Bhagat
3. Chintu Kumar Bhagat Minor Son Of Dr. Vijay Kumar Bhagat Under Guardianship Of Dr. Vijay Kumar Bhagat Father And Natural guardian. Resident Of Village - Sangrampur, P.O. and P.S. - Sangrampur, District-Munger, At Present Residing At Godda Town, P.O. and P.S. - Godda, District - Godda By Profession Medical Officer.
4. Prahlad Prasad Bhagat Son Of Late Nathuni Prasad Bhagat Resident Of Village, P.O. and P.S. - Sangrampur, District - Munger

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Narayan Prasad Singh, Sr. Advocate
For the Respondent No. 4	:	Mr. Jagdish Prasad Bhagat, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 29-08-2019

The present writ petition has been filed for setting aside the order dated 18.12.2012 passed by the learned court of Sub-Judge II, Munger whereby and whereunder the application of the intervenor, namely, Prahlad Prasad Bhagat under Order 1 Rule 10 of the Code of Civil Procedure, 1908 has been allowed and the said Prahlad Prasad Bhagat has been directed to be arrayed as



separate category defendant (performa defendant).

2. The brief facts of the case are that an agreement dated 23.2.1987 was prepared by the Respondent no. 2 herein, namely, Dr. Vijay Kumar Bhagat wherein it had been recited that he has received a sum of Rs. 2,95,340/- from Sri Krishna Mohan Bhagat i.e. the petitioner herein for sale of residential building and the rest amount will be paid at the time of registry. It was further stipulated in the said agreement that in case of non-payment or refusal to purchase building, the aforesaid amount shall be returned to the petitioner and the building would be sold to another person.

3. It appears that subsequently, the respondents first party herein did not execute the sale deed upon receipt of the balance amount of sale consideration on one pretext or another, hence, the petitioner had filed Title Suit No. 147 of 1992 for specific performance of contract / agreement before the learned court of Sub-Judge II, Munger.



After filing of the aforesaid title suit, a petition was filed by the respondent no. 4 herein under Order 1 Rule 10 of the Civil Procedure Code, 1908 for being impleaded as intervenor in the aforesaid suit, however, the said petition was rejected by an order dated 13.9.1994 passed by the learned trial court and the respondent no. 4 herein did not challenge the said order dated 13.9.1994, hence, the same became final. It appears that subsequently, the respondent no. 4 again filed a petition for impleadment under Order 1 Rule 10 of the Code of Civil Procedure, 1908 on 14.3.2008, now taking a plea that the suit property of the aforesaid title suit has been jointly acquired by the joint family fund of the plaintiff i.e. the petitioner herein from the respondent 1st set and the petitioner herein, taking advantage of him being the karta of the joint family, had filed the aforesaid suit for specific performance of contract, however, since a partition suit filed by the petitioner herein bearing Title Suit No. 109 of 1991 has been decreed by the Sub-Judge 1st Munger by a judgment and decree dated



23.6.2006 and a preliminary decree for partition of the suit property including the suit property of the aforesaid suit bearing Title Suit No. 147 of 1992 has been prepared, the respondent no. 4 has become entitled to share in the suit property pertaining to Title Suit No. 147 of 1992, thus, he is liable to be impleaded in the said Title Suit No. 147 of 1992.

4. The petitioner herein had filed an objection to the aforesaid petition dated 14.3.2008 filed by the Respondent No. 4 herein stating that the respondent no. 4 had also earlier filed an intervenor petition under Order 1 Rule 10 of the Code of Civil Procedure, 1908 but the same was dismissed by a well reasoned order dated 12.1.1994, hence, the present writ petition is not maintainable and is an abuse of process of the Court. Another objection, which was filed by the petitioner herein is that a person who is not party to the contract cannot be impleaded as party to the suit for specific performance.

5. The learned counsel for the petitioner has



submitted that the impugned order dated 18.12.2012 passed in Title Suit No. 147 of 1992 by the Sub-Judge II, Munger is perverse and illegal, hence, is fit to be set aside. It is submitted that the learned trial court has failed to consider the fact that the petition of the respondent no. 4 herein for impleadment had earlier been dismissed by an order passed by the learned trial court dated 13.9.1994 and the same has attained finality in view of the same having not been challenged before the higher court of law. It is further submitted that in a case of specific performance of contract, the parties to the agreement can only be parties to the suit and no third person can be impleaded. In this regard, the learned counsel for the petitioner has relied upon a judgment reported in AIR (32) 1945 Calcutta 355 (**Prem Sukh Gulgulia and another vs. Habib Ullah and others**) wherein a learned Division Bench of the Hon'ble Calcutta High Court has held as follows:-

“The necessary parties in a suit for specific performance of a contract for sale are the parties to the contract, or if they are dead their legal



representatives, as also a person who had purchased the property from the vendor after the contract. He is a necessary party as he would be affected, if he is volunteer, or if a purchaser for value, had purchased with notice of the contract. A person who claims adversely to the vendor is, however, not a necessary party. Where the property stands in the name of a person other than the vendor, and the suit for specific performance is brought by the purchaser, that person may be joined as a defendant as a proper party on an allegation that he is the benamidar of the vendor but if he appears and contends that he is not the benamidar of the vendor the proper procedure would be to discharge him from the suit, leaving it to the plaintiff in the suit for specific performance to institute a suit against him after he had got the conveyance in execution of the decree for specific performance against his vendor. This is on the principle that the scope of a suit for specific performance of a contract for sale ought not to be enlarged and the suit turned also into a title suit between one of either of the parties to the contract and a stranger to the contract.”

6. The learned counsel for the petitioner has next relied upon a judgment reported in AIR 1964 Tripura 16 wherein the learned Single Judge in the case of **Kshetra Mohan Nath Sarma vs. Mohamad Sadir Bepari and others**) has held



as follows:-

“4. I find myself unable to agree with the finding of the Subordinate Judge. This is a simple suit for specific performance of a contract of sale against the party who has entered into the contract. There is no prayer for possession of the property but only for the execution of the document of sale and its registration. The suit was brought under Section 27 of the Specific Relief Act which shows against whom a contract for specific performance may be enforced. As Mahananda Sil and Umananda Sil are persons who claim anterior title to the property even before the agreement for specific performance was entered into with the defendant, the plaintiff cannot obtain specific performance against them. If the plaintiff, had impleaded them as parties and if they had come and opposed that they were not proper and necessary parties to such a suit brought under Section 27 of the Specific Relief Act, the Court would certainly have discharged them from the suit. They had nothing to do with the contract for specific performance. Whatever right they possessed will not also be affected-by the decree for specific performance. If A enters into an agreement of sale with B in respect of a property belonging to C and B obtains a decree for specific performance against A, the title to or possession of the property of C will not in any way be affected. The possession of C will not be disturbed by the decree for specific performance. If A, after obtaining the decree, wants to get possession of the property he will have to file a fresh suit against C for title and



possession. It is only in such a suit that C will be a proper and necessary party.

6. *Order 1, Rule 10(2) will not also apply to the case. That provision permits the Court to add the name of any person who ought to have been joined as a defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. I have pointed out that under Section 27, Specific Relief Act, the plaintiff cannot obtain specific performance against Mahananda Sil and Umananda Sil and hence, it cannot be said that they ought to have been joined as defendants. Nor can it be said that their presence before Court was necessary to enable the Court effectually and completely to adjudicate and settle "all the questions involved in the suit". The learned Subordinate Judge has failed to understand the significance of the words "all the questions involved in the suit". In a suit for specific performance, the question of title as between the plaintiff and third parties cannot be said to be involved. The simple question in such a suit is whether the contract is true and whether specific performance should be granted. The further question whether the defendant had title to the property as against third parties and was entitled to enter into such a contract in respect of the land is quite foreign to the suit and the suit should not be complicated by the addition of third parties who may be claiming the property as against the defendant. Only those persons against*



whom the plaintiff can enforce specific performance of the contract are necessary and proper parties to such a suit. Such of the persons against whom the plaintiff cannot enforce the contract have no right to insist that they should be made parties to the suit. Neither under Order I, Rule 3 or Order II, Rule 3 C.P.C. can it be said that Mahananda Sil and Umananda Sil should have been made parties to such a suit.

12. *But in a case arising under Section 11 of the Specific Relief Act, the Section itself provides against whom specific performance of a contract may be enforced. Respondents 2 and 3 are not persons against whom specific performance can be claimed. Nor does the plaintiff want to enforce it against them Order I, Rule 10 C.P.C. provides that the name of a person who ought to have been joined whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added as parties. Now it cannot be said that the names of respondents 2 and 3 ought to have been joined as defendants in the suit as the plaintiff does not claim any specific performance against them. The only other question is whether their presence is necessary before court to enable the court effectually and completely to adjudicate upon and settle all the r questions involved in the suit. What is involved in the suit is whether the plaintiff is entitled to specific performance of a contract entered into by the defendant with*



him. No question of title of any property or possession of any property is involved in such a suit. To adjudicate upon and settle the question of specific performance the presence of respondents 2 and 3 is not necessary in the suit, in fact, impleading them would only mean complicating the suit and bringing into the suit questions of title and possession which are foreign to the suit.

Even if the plaintiff obtains a decree for specific performance he cannot claim title to the property against any third party nor can he claim possession against any third party who may be in possession. The plaintiff will have to file a fresh suit to establish his title and to claim possession against third parties like respondents 2 and 3. Respondents 2 and 3 cannot insist that their title to and their possession of the property should be gone into in this suit itself. It was pointed out that multiplicity of suits will thereby be avoided. It is not known at present whether the plaintiff will get a decree for specific performance against the defendant and even if he got such a decree whether he would proceed against respondents 2 and 3 to establish his title and recover possession from them. Thus one cannot even say whether multiplicity of proceedings will be avoided. Even for the sake of avoiding multiplicity, the Court should not allow a simple suit to become complicated. Nor can the Court allow matters which are entirely foreign to the suit to be brought into the suit by the addition of parties. Hence, Order I, Rule 10 C.P.C. will not make it necessary to implead respondents 2 and 3 in this suit."



7. Per contra, the learned counsel for the Respondent No. 4 has submitted that firstly, since the partition suit filed by the petitioner herein has been decreed and the respondent no. 4 has also been granted share in the suit property and since the suit property involved in the present case is also a part of the suit property of the said partition suit bearing Title Suit No. 109 of 1991, decreed vide judgment and decree dated 23.6.2006, the respondent no. 4 is a necessary party to the present suit in question and secondly, since the respondent no. 4 has merely been arrayed as performa defendant by the order dated 18.12.2012, no prejudice is going to be caused to anyone.

8. I have heard the learned counsel for the parties and gone through the materials on record and I find that it is a well settled law that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract and the scope of the suit for specific performance of a contract for sale cannot be enlarged by



changing the nature of the suit for specific performance and converting the same into a title suit between one or either of the parties to the contract and stranger to the contract. Even Section 15 of the Specific Relief Act, 1963 provides that the specific performance of a contract may be obtained by any party thereto. In the present case, the parties to the agreement in question is the petitioner herein and the respondents 1st set, more particularly the respondent no. 2 and as far as the respondent no. 4 herein is concerned, he is a stranger to the agreement, hence, cannot be made a party to the suit, especially since his first application for impleadment as party to the suit in question was dismissed by the learned trial court by an order dated 13.9.1994, which has attained finality. Moreover, the decree passed in the Title Suit dated 23.6.2006, granting share in the suit property in question would not entitle the respondent no. 4 herein to be added as party to the suit in question, in the present case, inasmuch as the same is a separate right and the agreement



in question in the present case, nowhere depicts that the money received by the respondent no. 2 from the petitioner herein belong to joint hindu family. In any view of the matter permitting the respondent no. 4 to be arrayed as defendant to the suit in question would not only complicate the matter but also would be against the spirit of the specific relief act, 1963 and the law laid down by the Hon'ble Apex Courts from time to time in this regard.

9. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I find that the order dated 18.12.2012 passed by the learned Sub-Judge II, Munger in Title Suit No. 147 of 1992 is perverse and against the law, hence is set aside.

10. Accordingly, the petition filed by the respondent no. 4 under Order 1 Rule 10 of the Code of Civil Procedure, 1908 dated 14.3.2008, before the learned court below, also stands dismissed. Before parting, it must be stated that the present suit has already lingered from the



year, 1992 and the respondent no. 4 has apparently been an impediment in disposal of the suit which has led to travesty of justice, hence, it is directed that the learned trial court shall make all endeavours to dispose of the aforesaid suit in question within a period of six months from the date of receipt / production of a copy of this order with fortnight by submission of status report to the Register General of this Court about the progress of the case.

11. The writ petition stands allowed on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	2.7.2019
Uploading Date	29.08.2019
Transmission Date	NA

