

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP227 No. 577 of 2019**

- Suresh Guruwani S/o Late Mohanlal Guruwani Aged About 54 Years R/o Tirthani Gali, New Sarkanda, police Station Sarkanda, Tahsil And District Bilaspur Chhattisgarh Civil And Revenue District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh (defendant No. 2) ---- **Petitioner**

Versus

1. Chandrapal Guruwani S/o Late Mohan Lal Guruwani Aged About 47 Years R/o Tirthani Gali, New Sarkanda, police Station Sarkanda, Tahsil And District Bilaspur Chhattisgarh Civil And Revenue District Bilaspur Chhattisgarh. (Plaintiff)
2. Smt. Saraswati Guruwani W/o Late Mohanlal Gurawani (Died) (defendant No. 1)
3. Ashok Kumar Mishra S/o Kaushal Kumar Mishra R/o Ward No. 12, Mahamaya Para, Bada Bazar Mungeli, Police Station - Mungeli, Tashil And District Mungeli, Chhattisgarhg, Civil And Revenue District Mungeli Chhattisgarh (defendant No. 3)
4. Smt. Sudha Mishra W/o Banshi Lal Mishra Aged About 54 Years R/o Hotel Ilahabadi, Infront Of Petrol Pump Chantidih, Bilaspur, Police Station Sarkanda, Tahsil And District Bilaspur Chhattisgarh, Civil And Revenue District Bilaspur Chhattisgarh. (defendant No. 4)
5. Yogesh Kumar Mishra S/o Banshi Lal Mishra Aged About 35 Years R/o Hotel Ilahabadi, Infront Of Petrol Pump Chantidih, Bilaspur, Police Station Sarkanda, Tahsil And District Bilaspur Chhattisgarh, Civil And Revenue District Bilaspur Chhattisgarh. (defendant No. 5)
6. Smt. Harshlata Vaishnav W/o Govind Das Vaishnav Aged About 39 Years R/o Arvind Nagar Bandhwapara, Sarkanda, Tashil And District Bilaspur Chhattisgarh, Civil And Revenue District : Bilaspur, Chhattisgarh (defendant No. 6)
7. Govind Das Vaishnav S/o Late Gaensh Das Vaishnav Aged About 50 Years R/o Arvind Nagar Bandhwapara, Sarkanda, Tashil And District Bilaspur Chhattisgarh, Civil And Revenue District Bilaspur, Chhattisgarh., (defendant No. 7)
8. State Of Chhattisgarh Through The Collector Bilaspur, Police Station Civil Lines, Tahsil And District Bilaspur Chhattisgarh, Civil And Revenue District Bilaspur Chhattisgarh (defendant No. 8) ---- **Respondents**

For Petitioner

:

Mr. Rajendra Jain, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****19.07.2019**

1. This writ petition is directed against the impugned order dated 15.05.2019 passed by the trial Court directing the impleadment of the proposed defendants No. 9, 10 & 11 in the cause title of the suit at the instance of petitioner herein.
2. Mr. Agrawal, learned counsel for the petitioner/ defendant No. 2 would submit that the trial Court is absolutely unjustified in directing the impleadment of three persons as defendants No. 9, 10 & 11 as it runs contrary to the decision rendered by the Supreme Court in the matter of **Amit Kumar Shaw and Another vs. Farida Khatoon and Another**¹.
3. I have heard the learned counsel for the petitioner/ defendant No. 2, considered his submissions made and went through the records with utmost circumspection.
4. On the application filed by the plaintiff under Order 1 Rule 10 of the CPC, the trial Court has held that the defendant No. 2 (petitioner herein) has sold the suit land to the proposed defendants No. 9, 10 & 11. Therefore, it would be appropriate to implead them as the party defendant in the suit at the instance of the plaintiff.
5. Their Lordships of the Supreme Court in the matter of **Amit Kumar Shaw** (*supra*) have held that a transferee pandate lite cannot claim his addition in the pending suit as of right, though the Court has a discretion to make him a party; he can be added as a proper party only if his interest in the subject-matter of the suit is substantial and not just peripheral. It was observed as under :-

“14. An alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under O 1 Rule 10. Since under the doctrine of lis pendens a decree passed in the suit

1. (2005) 11SCC 403

during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.

15. [Section 52](#) of the Transfer of Property Act is an expression of the principle "pending a litigation nothing new should be introduced". It provides that pendente lite, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This Section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a lis pendens, the following elements must be present:

1. There must be a suit or proceeding pending in a Court of competent jurisdiction.
 2. The suit or proceeding must not be collusive.
 3. The litigation must be one in which right to immovable property is directly and specifically in question.
 4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.
 5. Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.
16. 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.”

6. In the matter of **Amit Kumar Shaw** (*supra*), the judicial discretion has been given to the trial Court to implead the transferee pendente lite in the suit, the judicial discretion which the trial Court has exercised and directed to the proposed defendants No. 9, 10 & 11 as a party defendant suit, which is strictly in accordance with law. I do not find any merit in the present writ petition.
7. Accordingly, the present petition deserves to be and, is hereby dismissed. No cost(s).

**Sd/-
(Sanjay K. Agrawal)
Judge**