

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9470 of 2015

1. Pushpa Drolia wife of Rajendra Drolia
2. Minu Drolia, wife of Prakash Drolia
Both residents of Opposite Shivam Sundaram Building, Huchukpara,
Purulia, West Bengal.

... .. Petitioner/s

Versus

- 1.1. Sohrai Mahton S/o late Ramautar Mahton Resident of Mohalla Khagaul,
Near Jagat Narayan College, P.S. Khagaul, P.O. Khagaul, District- Patna.
2. Narayan Mahton, S/o Sri Ram Roop Mahton, resident of Mohalla- Tulsi
Mandi, P.s. Alamganj, P.O. Gulzarbagh, District- Patna.
3. Sohrai Mahton, S/o Sri Ramautar Mahton, resident of Near Jagat Narayan
College, P.S. Khagaul, P.O. Khagaul, District- Patna.
4. Sunita Prasad, W/O Late Mahendar Prasad, resident of Bajrangpuri,
Bajrangpath, P.S. Alamganj, District- Patna.
5. Urmila Devi W/O Sri Sharda Prasad Yadav, resident of Asisghat, Bihar
Sharif, P.S. Bihar Sharif, District- Nalanda.
6. Most. Kaushalya Devi W/O Late Rameshwar Mahton
7. Surendra Kumar S/O Late Rameshwar Mahton
8. Kamla Kumari Daughter of Late Rameshwar Mahton
All respondents 6 to 8 are residents of Mohalla- Tulsi Mandi, P.S. Alamganj,
P.O. Gulzarbagh, District- Patna.
9. Kailash Prasad Singh, S/O Late Dukhit Singh, resident of Mili, P.S.
Biddupur, P.O. Mili, District- Vaishali.
10. Hari Krishna Gope, S/O Sri Ram Kishun Gope, Mohalla- Alamganj, P.S.
Alamganj, P.O. Gulzarbagh, District- Patna.
11. Sarita Devi, W/O Sri Suresh Prasad Singh.
12. Pramila Sinha, W/O Sri Shyam Nand Sinha
Both respondents 11 and 12 are residents of Village- Muzarfa Kamtaul, P.S.
Kudhari, P.O. Kamtaul, District- Muzaffarpur.
13. Gayatri Devi, W/O Sri Bhagwan Prasad, resident of Village- Chhoti
Chariyari, P.S. and P.O. Chandi, District- Nalanda.
14. Ashok Kumar Soni, S/O Sri Achhewat Seth, resident of Mohalla- Sonartoil,
P.S. Khajekalan, P.O. Patna City, District- Patna.
15. Chinta Ratnakar, W/o Sri R.P. Ratnakar, resident of Village- Parvedhi, P.S.
Lalganj, P.O. Lalaganj, District- Vaishali.
16. Pramod Kumar Singh S/o late Madan Gopal Resident of Mohalla-
1. Machchua Toli, Arya Kumar Road, P.S. Kadam Kuan, P.O. District- Patna.
17. Pramod Kumar Singh, S/O Sri Madan Gopal
18. Vinod Kumar Sinha, S/O Sri Madan Gopal
All respondents 16 to 18 are residents of Mohalla- Machua Toli, Arya



Kumar Road, P.S. Kadam Kuan, P.O. Bankipur, District- Patna.

19. Vinod Kumar Singh S/o late Santlal Singh Resident of At and P.O.
1. Vishunpur Vande, P.S. Bhagwanpur, District- Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jitendra Kishore Verma, Adv. Mr. Siddharth Prasad, Adv.
For the Respondent No.2	:	Mr. Anil Kumar, Adv.
For the Respondent No. 11 & 13 :	:	Mr. Anshay Bahadur Mathur, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 14-08-2020

The present writ petition has been filed challenging the order dated 30.4.2015 passed by the learned Sub-Judge II, Patna City in Title Suit No. 416 of 1985 whereby and whereunder the application filed by the interveners-petitioners herein under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908, for being impleaded as party to the said suit has been dismissed.

2. The brief facts of the case are that the plaintiffs-respondents herein filed a title suit bearing Title Suit No. 416 of 1985 against the defendants-respondents herein seeking the following reliefs:-

“(a) That preliminary decree of partition of plaintiffs 8 annas share in the suit property.

(b) That separate takhta of the plaintiffs be carved out by appointment of advocate commissioner and final decree be accordingly prepared and the plaintiffs be put in khas



possession.

(c) For cost of the suit.

(d) For any other relief(s) for which the plaintiffs are found to be entitled.”

3. The description of the land in question has been given in Schedule A to the plaint as Khata no. 631, C.S. Plot No. 1456, M.S. Plot No. 1241, Ward No. 18 (old), 24 (new), Sheet No. 147, ad-measuring 10 kathas, situated at Mauza Sandalpur, P.S.- Alamganj, District-Patna-7.

4. It has been stated in the writ petition that the plaintiffs / respondents and main defendants/ respondents belong to the branches of two brothers namely Late Ramcharan Mahton and Late Beni Mahton both sons of Late Tikam Mahton. The suit property belonged to daughter of Late Tikam Mahton namely Balkesia who was murdered in 1952 and was issueless. In fact husband of Balkesia, who predeceased her, gifted the suit property to her vide registered deed of gift dated 18.12.1928. After her death the two brothers of Balkesia, namely Late Ramcharan Mahton and Late Beni Mahton, fought tooth and nail for the suit property with Ram Chandra Mahton, Ram Das Mahton, Tuntun Mahton, Sheonath Mahton and Ram Prasad Mahton who claimed to be reversioners of Late Balkesia.



Ultimately the matter travelled to this Hon'ble Court in Second Appeal No. 1891 of 1955. Then good sense prevailed on the parties and the dispute culminated into a compromise decree passed on 22.07.1958 in Second Appeal No. 1891 of 1955 by this Hon'ble court according to which the branches of two brothers namely Late Ramcharan Mahton and Late Beni Mahton were given 8 annas share each of the suit property. Subsequently wife of Late Ramcharan Mahton namely Quadri Devi fraudulently executed some sale deeds in favour of different persons (defendants / respondents) with respect to more land than what had actually fallen in the share of Late Ramcharan Mahton. Therefore the plaintiffs / respondents were forced to file title suit bearing T.S. No. 416 of 1985.

5. It is further stated that in the title suit bearing Title Suit No. 416 of 1985, the plaintiffs/ respondents very cleverly suppressed the subsequent agreement dated 10.9.1958 entered into between Late Ramcharan Mahton and Late Beni Mahton by virtue of which the entire half share of total land measuring 8 Kathas, 6 Dhurs, which fell in equal share of the two brothers namely Late Ramcharan Mahton and Late Beni Mahton as per the decree passed on 22.7.1958 in Second Appeal No. 1891 of 1955, was relinquished by Late Beni Mahton in favour of his



brother Late Ramcharan Mahton in lieu of cost of litigation and Rs. 100/- paid by Late Ramcharan Mahton.

6. It is further stated that after the death of Quadri Devi (wife of Late Ramcharan Mahton) in the year 1985, the agreement dated 10.9.1958 somehow came in possession of the plaintiffs/respondents who chose to file T. S. No. 416 of 1985 for half share of the suit property by suppressing the said agreement and misrepresenting facts. In fact, the son of Late Ramcharan Mahton namely Rameshwar Mahton had also died earlier leaving behind his wife and two minor children who were vulnerable target for the plaintiffs/ respondents. The plaintiffs / respondents had in fact never tried to get their names mutated with respect to the 8 annas of the suit property from the year 1958 to 1985 (27 years) because they were aware about the agreement dated 10.9.1958 by which Late Beni Mahton had waived his right, title, interest and possession over the 8 annas of the suit property.

7. The further case of the petitioner is that by virtue of the decree passed on 22.7.1958 in Second Appeal No. 1891 of 1955 and agreement dated 10.9.1958, wife of Late Ramcharan Mahton namely Quadri Devi became the absolute owner of 8 kathas and 6 Dhurs of land. Subsequently, on account of the



death of her husband and her son, Quadri Devi came in need of funds to support herself, her daughter in law and her grandchildren, therefore in the year 1982 she plotted the entire 8 kathas and 6 Dhurs of land in eight plots out of which seven measured 1 katha each and one measured 1 katha and 6 Dhur and sold them to different persons (proforma defendants/ respondents) including proforma defendants / respondents No. 15 and 16, 17 and 18, who were defendant nos. 10 and 11, 12 & 13 respectively in the title suit. Proforma defendant / respondent no. 15 purchased 1 Katha of land vide registered sale deed dated 20.10.1982 and proforma defendants / respondents nos. 16, 17 and 18 purchased 1 Katha of land vide registered sale deed dated 14.12.1982.

8. It is further stated that the interveners-petitioners herein purchased 1 kathas of land each from defendants-respondents no. 15 and 16, to 18, who are defendants no. 10 and 11 to 13 respectively in the Title Suit, vide two registered sale deeds, both dated 28.11.2001. In fact, before purchase of 1 kathas of land each by the interveners/petitioners, they had enquired in depth about the land and found out that present title suit is going on regarding title and partition of suit property including the lands going to be purchased by them but upon genuine



persuasion, one of the principal plaintiff namely Sri Narayan Mahton, had sworn an affidavit on 20.10.2001 stating therein the true facts and undertook not to claim his right, title, interest and possession on the land being purchased by the interveners / petitioners. The said Narayan Mahton had even put his signature, as a witness, on the two registered sale deeds dated 28.11.2001, by which the interveners / petitioners had purchased their lands. It is stated that the said Narayan Mahton had orally assured the interveners/petitioners that title suit bearing T.S. No. 416 of 1985 will be withdrawn. The interveners / petitioners came in peaceful possession over the 2 Kathas of land purchased by them and filed their respective mutation cases before the Circle Officer, Sadar, Patna for mutation of the lands purchased by them. Pursuant to the orders passed by the Circle Officer, Sadar, Patna, the lands purchased by interveners / petitioners were mutated in their respective names and they started paying rent accordingly. Thereafter, the interveners / petitioners built a 3 storied residential house on the said 2 kathas of land. The interveners / petitioners were under the impression that the title suit bearing T.S. No. 416 of 1985 has been withdrawn as orally assured to them by Sri Narayan Mahton but on 15.9.2011 when the interveners / petitioners went to inspect



their land they came to know that the title suit is still pending and some decree has been passed in it. Then the interveners / petitioners engaged a lawyer who inquired and informed them about the stage of the suit. Accordingly the interveners / petitioners filed an application for their impleadment in the title suit under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 on 27.9.2011. The defendant nos. 6 and 8 filed their rejoinder to the abovesaid application filed by interveners / petitioners. The said application of the interveners / petitioners herein was rejected by the learned court below by the impugned order dated 30.4.2015 on the ground that the suit is very old and final order and preliminary decree have already been passed in the said suit on 15.5.2008 and 26.5.2008 respectively.

9. The learned counsel for the petitioner has next submitted that as per the aforesaid order dated 15.5.2008 passed in Title Suit No. 416 of 1985 by the learned court below, the suit of the plaintiffs and the counter claim of the defendant nos. 6, 8 and 14 have been allowed as against the defendant nos. 1 to 4 and 9 to 13 on contest and ex parte against defendant nos. 5 and 7. Accordingly, 3 kathas of land (suit property) situated to the south of the plot of plaintiff no. 6 (Urmila Devi) has been given



equally to defendant nos. 6, 8 and 14 i.e. 1 katha each. Further plaintiff nos. 5 and 6, who have claimed their right, title, interest and possession on the basis of bonafide purchase from the main plaintiffs i.e. plaintiff nos. 1, 2 and 3, have been given 1 katha each from the 8 annas share of plaintiff nos. 1, 2 and 3. The lands on which plaintiff nos. 5 and 6 have already constructed their residential house has been given to them.

10. The learned counsel for the petitioners has contended that the learned court below has erred by rejecting the petition of the petitioners herein dated 27.9.2011 on the ground that since in the aforesaid suit, a judgment and decree dated 15.5.2008/ 26.05.2008 has already been passed, there is no scope for adding of interveners in the suit inasmuch as it is a well settled law that a suit is said to be pending till the final decree is signed by the judge after engrossing the same on the stamps and the allottees of the shares are put in possession of their respective property, hence, in the present case since the final judgment has been passed on 15.5.2008 and only a preliminary decree has been passed on 26.5.2008, the suit cannot be said to have been finally disposed of. In this regard, the learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Apex Court, reported in *(2011) 6 SCC 462 (Prema vs. Nanje*



Godwa & Others), paragraph nos. 13, 14 and 20 whereof are reproduced herein below:-

13. The learned Single Judge then referred to the judgment of this Court in Phoolchand v. Gopal Lal⁵ and observed: (S. Narayana Reddy case, AIR pp. 268-69, paras 19-20)

“19. Since the parties have invoked the jurisdiction of the civil court to decide their rights in a partition suit, their rights can be considered at any stage till the passing of the final decree. Till the final decree as stated above is passed in a partition suit, it is well settled that the suit is said to be pending, till the final decree is signed by the Judge after engrossing the same on the stamps. In view of the insertion of Section 29-A in the Hindu Succession Act by Act 13 of 1986 the statute conferred a right on the daughters and they become coparceners in their own right in the same manner as sons and have the same rights in the coparcenary property. In this case, admittedly the daughters are already on record and, therefore, they are entitled to claim a right and request the court to pass a final decree by taking into account the altered situation. ...

20. As pointed out by the Supreme Court in Phoolchand case, there is no prohibition in the Code of Civil Procedure against passing a second preliminary decree particularly in partition suits where shares specified in the preliminary decree have



to be adjusted so long as a final decree has not been passed in that suit. On facts in this case, a preliminary decree has been passed giving 1/3rd share to the plaintiff. The shares of the other persons also have to be ascertained and the rights of the unmarried daughters have been recognised in the preliminary decree. There is a statutory change by the introduction of Section 29-A in the Hindu Succession Act which came into force on 5-9-1985 and the preliminary decree has been passed on 26-12-1973, but no final decree has been passed. The plaintiff himself filed an application for passing a final decree and the trial court is bound to implement the statutory rights conferred on the daughters and it ought to have allowed the petition in accordance with law.”

14. *While dismissing the appeal preferred against the judgment of the High Court, this Court observed as under: (Sai Reddy case, SCC pp. 651-52, para 7)*

“7. ... The crucial question, however, is as to when a partition can be said to have been effected for the purposes of the amended provision. A partition of the joint Hindu family can be effected by various modes viz. by a family settlement, by a registered instrument of partition, by oral arrangement by the parties, or by a decree of the court. When a suit for partition is filed in a court, a preliminary decree is passed determining shares of the members of the family. The final decree follows, thereafter, allotting specific properties and directing



the partition of the immovable properties by metes and bounds. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. In the instant case, there is no dispute that only a preliminary decree had been passed and before the final decree could be passed the amending Act came into force as a result of which clause (ii) of Section 29-A of the Act became applicable.

... Since the legislation is beneficial and placed on the statute book with the avowed object of benefiting women which is a vulnerable section of the society in all its stratas, it is necessary to give a liberal effect to it. For this reason also, we cannot equate the concept of partition that the legislature has in mind in the present case with a mere severance of the status of the joint family which can be effected by an expression of a mere desire by a family member to do so. The partition that the legislature has in mind in the present case is undoubtedly a partition completed in all respects and which has brought about an irreversible situation. A preliminary decree which merely declares shares which are themselves liable to change does not bring about any



irreversible situation. Hence, we are of the view that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act. Any other view is likely to deprive a vast section of the fair sex of the benefits conferred by the amendment.”

20. *This Court referred to the judgments of various High Courts, which took the view that in a partition suit, the High Court has jurisdiction to amend the shares suitably even if the preliminary decree has been passed and then proceeded to observe: (Phoolchand case, AIR p. 1473, para 7)*

“7. We are of the opinion that there is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented. We have already said that it is not disputed that in partition suits the court can do so even after the preliminary decree is passed. It would in our opinion be convenient to the court and advantageous to the parties, specially in partition suits, to have disputed rights finally settled and specification of shares in the preliminary decree varied before a final decree is prepared. If this is done, there is a clear determination of the rights of parties to the suit



on the question in dispute and we see no difficulty in holding that in such cases there is a decree deciding these disputed rights; if so, there is no reason why a second preliminary decree correcting the shares in a partition suit cannot be passed by the court. So far therefore as partition suits are concerned we have no doubt that if an event transpires after the preliminary decree which necessitates a change in shares, the court can and should do so; and if there is a dispute in that behalf, the order of the court deciding that dispute and making variation in shares specified in the preliminary decree already passed is a decree in itself which would be liable to appeal. We should however like to point out that what we are saying must be confined to partition suits, for we are not concerned in the present appeal with other kinds of suits in which also preliminary and final decrees are passed.”

11. The learned counsel for the petitioner has also relied upon a judgment, reported in **(2011) 9 SCC 788 (Ganduri Koteshwaramma vs. Chakiri Yanadi)**, paragraph no. 17 whereof is reproduced herein below:-

17. The appellant therein challenged the order of the High Court before this Court. This Court considered the matter thus: (S. Sai Reddy case, SCC pp. 651-52, para 7)

“7. ... A partition of the joint Hindu family can



be effected by various modes viz. by a family settlement, by a registered instrument of partition, by oral arrangement by the parties, or by a decree of the court. When a suit for partition is filed in a court, a preliminary decree is passed determining shares of the members of the family. The final decree follows, thereafter, allotting specific properties and directing the partition of the immovable properties by metes and bounds. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. In the instant case, there is no dispute that only a preliminary decree had been passed and before the final decree could be passed the amending Act came into force as a result of which clause (ii) of Section 29-A of the Act became applicable. This intervening event which gave shares to Respondents 2 to 5 had the effect of varying shares of the parties like any supervening development. Since the legislation is beneficial and placed on the statute book with the avowed object of benefitting women which is a vulnerable section of the society in all its strata, it is necessary to give a liberal effect to it. For



this reason also, we cannot equate the concept of partition that the legislature has in mind in the present case with a mere severance of the status of the joint family which can be effected by an expression of a mere desire by a family member to do so. The partition that the legislature has in mind in the present case is undoubtedly a partition completed in all respects and which has brought about an irreversible situation. A preliminary decree which merely declares shares which are themselves liable to change does not bring about any irreversible situation. Hence, we are of the view that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act. Any other view is likely to deprive a vast section of the fair sex of the benefits conferred by the amendment. Spurious family settlements, instruments of partitions not to speak of oral partitions will spring up and nullify the beneficial effect of the legislation depriving a vast section of women of its benefits.”

12. The learned counsel for the petitioner has also relied on yet another judgment, reported in **(2016) 1 SCC 730** (**Sharadamma vs. Mohd. Pyrejan**), paragraph no. 6 whereof is reproduced herein below:-

6. The question is no more res integra. This



Court in Dhurandhar Prasad Singh v. Jai Prakash University has laid down thus: (SCC pp. 541-42 & 549-50, paras 6-7 & 26)

“6. In order to appreciate the points involved, it would be necessary to refer to the provisions of Order 22 of the Code, Rules 3 and 4 whereof prescribe procedure in case of devolution of interest on the death of a party to a suit. Under these Rules, if a party dies and right to sue survives, the court on an application made in that behalf is required to substitute legal representatives of the deceased party for proceeding with a suit but if such an application is not filed within the time prescribed by law, the suit shall abate so far as the deceased party is concerned. Rule 7 deals with the case of creation of an interest in a husband on marriage and Rule 8 deals with the case of assignment on the insolvency of a plaintiff. Rule 10 provides for cases of assignment, creation and devolution of interest during the pendency of a suit other than those referred to in the foregoing Rules and is based on the principle that the trial of a suit cannot be brought to an end merely because the interest of a party in the subject-matter of the suit has devolved upon another during its pendency but such a suit may be continued with the leave of the court by or against the person upon whom such interest has devolved. But, if no such step is taken, the suit



may be continued with the original party and the person upon whom the interest has devolved will be bound by and can have the benefit of the decree, as the case may be, unless it is shown in a properly constituted proceeding that the original party being no longer interested in the proceeding did not vigorously prosecute or colluded with the adversary resulting in decision adverse to the party upon whom the interest had devolved. The legislature while enacting Rules 3, 4 and 10 has made a clear-cut distinction. In cases covered by Rules 3 and 4, if right to sue survives and no application for bringing the legal representatives of a deceased party is filed within the time prescribed, there is automatic abatement of the suit and procedure has been prescribed for setting aside abatement under Rule 9 on the grounds postulated therein. In cases covered by Rule 10, the legislature has not prescribed any such procedure in the event of failure to apply for leave of the court to continue the proceeding by or against the person upon whom interest has devolved during the pendency of a suit which shows that the legislature was conscious of this eventuality and yet has not prescribed that failure would entail dismissal of the suit as it was intended that the proceeding would continue by or against the original party although he ceased to have any interest in the subject of dispute in the event of



failure to apply for leave to continue by or against the person upon whom the interest has devolved for bringing him on the record.

7. Under Rule 10, Order 22 of the Code, when there has been a devolution of interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against persons upon whom such interest has devolved and this entitles the person who has acquired an interest in the subject-matter of the litigation by an assignment or creation or devolution of interest pendente lite or suitor or any other person interested, to apply to the court for leave to continue the suit. But it does not follow that it is obligatory upon them to do so. If a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record, and yet, as pointed out by Their Lordships of the Judicial Committee in Moti Lal v. Karrab-Ul-Din he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary. It is also plain that if the person who has acquired an interest by devolution, obtains leave to carry on the suit, the suit in his hands is not a new suit, for, as Lord Kingsdown of the Judicial Committee said in Prannath Roy Chowdry v. Rookea Begum, a cause of action is



not prolonged by mere transfer of the title. It is the old suit carried on at his instance and he is bound by all proceedings up to the stage when he obtains leave to carry on the proceedings.

26. The plain language of Rule 10 referred to above does not suggest that leave can be sought by that person alone upon whom the interest has devolved. It simply says that the suit may be continued by the person upon whom such an interest has devolved and this applies in a case where the interest of the plaintiff has devolved. Likewise, in a case where interest of the defendant has devolved, the suit may be continued against such a person upon whom interest has devolved, but in either eventuality, for continuance of the suit against the persons upon whom the interest has devolved during the pendency of the suit, leave of the court has to be obtained. If it is laid down that leave can be obtained by that person alone upon whom interest of a party to the suit has devolved during its pendency, then there may be preposterous results as such a party might not be knowing about the litigation and consequently not feasible for him to apply for leave and if a duty is cast upon him then in such an eventuality he would be bound by the decree even in cases of failure to apply for leave. As a rule of prudence, initial duty lies upon the plaintiff to apply for leave in case the factum of



devolution was within his knowledge or with due diligence could have been known by him. The person upon whom the interest has devolved may also apply for such a leave so that his interest may be properly represented as the original party, if it ceased to have an interest in the subject-matter of dispute by virtue of devolution of interest upon another person, may not take interest therein, in ordinary course, which is but natural, or by colluding with the other side. If the submission of Shri Mishra is accepted, a party upon whom interest has devolved, upon his failure to apply for leave, would be deprived from challenging correctness of the decree by filing a properly constituted suit on the ground that the original party having lost interest in the subject of dispute, did not properly prosecute or defend the litigation or, in doing so, colluded with the adversary. Any other party, in our view, may also seek leave as, for example, where the plaintiff filed a suit for partition and during its pendency he gifted away his undivided interest in the Mitakshara coparcenary in favour of the contesting defendant, in that event the contesting defendant upon whom the interest of the original plaintiff has devolved has no cause of action to prosecute the suit, but if there is any other co-sharer who is supporting the plaintiff, he may have a cause of action to continue with



the suit by getting himself transposed to the category of plaintiff as it is well settled that in a partition suit every defendant is a plaintiff, provided he has cause of action for seeking partition. Thus, we do not find any substance in this submission of the learned counsel appearing on behalf of the appellant and hold that prayer for leave can be made not only by the person upon whom interest has devolved, but also by the plaintiff or any other party or person interested.”

13. The learned counsel for the petitioner has also relied on a judgment rendered by the Hon'ble Apex Court, reported in **(2016) 12 SCC 534 (Chandra Bai vs. Khandawal Vipra Vidyalaya Samiti)** to contend that no period of limitation is prescribed under Order 22 Rule 10 of the Code of Civil Procedure, 1908 inasmuch as the right to apply under the said rule is a continuous right and application can thereafter be made at any stage till the proceedings are pending. In this connection, the Ld. counsel has referred to paragraph nos. 3, 4, 6, 7 and 8 of the said judgment, which are reproduced herein below:-

3. We have duly taken note of these decisions and it appears to us that in Raj Kumar v. Sardari Lal this Court has held that in case of an assignment, creation or devolution of any interest during the pendency of any suit, Order



22 Rule 10 CPC confers a discretion on the court hearing the suit to grant leave to the person in or upon whom such interest has come to vest or devolve to be brought on record. Bringing of a lis pendens transferee on record is not as of right but is the discretion of the court.

4. We have also noticed that in Amit Kumar Shaw v. Farida Khatoon this Court has held that it is not necessary to make a detailed enquiry at the stage of granting leave under Order 22 Rule 10 CPC. The Court at that point of time has to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings.

6. Mr Sanjib Sen, learned Senior Counsel appearing for Respondent 1 Society submitted that in a case under Order 22 Rule 10 CPC, where rights are derived by an assignee or a successor-in-interest pending litigation, it is for that assignee or transferee to come on record if he so chooses and to defend the suit. In support of his submission he relied on the decisions of this Court in State of Orissa v. Ashok Transport Agency and Dhurandhar Prasad Singh v. Jai



Prakash University and pointed out that under Order 22 Rule 10, the right of the assignee and/or the successor-in-interest will continue when there has been a devolution of interest during the pendency of a suit. The suit can, by leave of the Court, be continued by or against the persons upon whom such interest has devolved and this entitles the person who has acquired interest in the subject-matter of a litigation by assignment or creation or devolution of interest pendente lite or any other person in interest, to apply to the Court for leave to continue the suit.

7. Mr Sanjib Sen further contended that no period of limitation is prescribed under Order 22 Rule 10 CPC. In fact the right to apply under this Rule is a continuous right and application can therefore be made at any time till the proceedings are pending. He further contended that the question of delay/laches or setting aside abatement of suit arises only where the case falls under Order 22 Rule 3 or Rule 4 and not where the case is covered by Rule 10. According to him, it is the discretion of the Court and if the Court is prima facie satisfied with the facts so pleaded before the Court, it can allow such application.

8. We have further noticed that in Baijnath Ram v. Tunkowati Kuer the Full Bench of the Patna High Court has held: (SCC OnLine Pat



para 15)

“15. ... Another thing to notice in connection with this rule is that a party on whom the interest of the deceased plaintiff or defendant devolves is not entitled to continue the suit or appeal as a matter of right, it is essential to obtain the leave of the Court. The granting of leave is within the discretion of the Court. The Court, however, is to exercise its discretion judicially and according to well-established principles. Further, unlike Rules 3 and 4, no limitation is prescribed for presentation of an application under this rule and no penalty is laid down for failure to substitute the person on whom the interest of the deceased plaintiff or defendant was devolved. Therefore, the right to make an application under this rule is a right which accrues from day to day and can be made at any time during the pendency of a suit. There is no abatement under this rule.”

14. The learned counsel for the petitioners has further submitted that during pendency of a partition suit, transferee pendente lite of an interest in a part of the suit property, in spite of not being mentioned in the preliminary decree for partition, has a right to be impleaded as a party and has locus standi to claim equitable partition before the Collector in the final decree proceedings under Section 54 of the Transfer of Property Act,



1882. In this connection, the learned counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court, reported in **(1983) 1 SCC 18 (Khemchand Shankar Chaudhari vs. Vishnu Hari Patil)**, paragraph no. 6 whereof is reproduced herein below:-

“6. Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject-matter of a suit from any of the parties to the suit will be bound insofar as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the



position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an Official Receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an Official Receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out. The Collector who has to effect partition of an estate under Section 54 of the Code of Civil Procedure has no doubt to divide it in accordance with the decree sent to him. But if a party to such a decree dies leaving some heirs about whose interest there is no dispute should he fold up his hands and return the papers to the civil court? He need not do so. He may proceed to allot the share of the deceased party to his heirs. Similarly he may, when there is no dispute, allot the share of a deceased party in favour of his legatees. In the case of insolvency of a party, the Official Receiver may be allotted the share of the insolvent. In the case of transferees pendente lite also, if there is no dispute, the Collector may proceed to make allotment of properties in an equitable manner instead of rejecting their claim for such equitable partition on the ground that they have no locus standi. A transferee from a party of a property which is the subject-matter of partition can exercise all the rights of the transferor. There is



no dispute that a party can ask for an equitable partition. A transferee from him, therefore, can also do so. Such a construction of Section 54 of the Code of Civil Procedure advances the cause of justice. Otherwise in every case where a party dies, or where a party is adjudicated as an insolvent or where he transfers some interest in the suit property pendente lite the matter has got to be referred back to the civil court even though there may be no dispute about the succession, devolution or transfer of interest. In any such case where there is no dispute if the Collector makes an equitable partition taking into consideration the interests of all concerned including those on whom any interest in the subject-matter has devolved, he would neither be violating the decree nor transgressing any law. His action would not be ultra vires. On the other hand, it would be in conformity with the intention of the legislature which has placed the work of partition of lands subject to payment of assessment to the Government in his hands to be carried out "in accordance with the law (if any) for the time being in force relating to the partition or the separate possession of shares".

15. Lastly, the learned counsel for the petitioners has relied upon a judgment rendered by the Hon'ble Apex Court, reported in **(2007) 10 SCC 719 (Dhanlaxmi vs. P. Mohan)**, paragraph no. 5 whereof is reproduced herein below:-



“5. Section 52 deals with a transfer of property pending suit. In the instant case, the appellants have admittedly purchased the undivided shares of Respondents 2, 3, 4 and 6. It is not in dispute that the first respondent P. Mohan has got an undivided share in the said suit property. Because of the purchase by the appellants of the undivided share in the suit property, the rights of the first respondent herein in the suit or proceeding will not affect his right in the suit property by enforcing a partition. Admittedly, the appellants, having purchased the property from the other co-sharers, in our opinion, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings. In our opinion, the appellants are necessary and proper parties to the suit, which is now pending before the trial court. We also make it clear that we are not concerned with the other suit filed by the mortgagee in these proceedings.”

16. Per contra, the learned counsel for the respondent Nos. 11 and 13 has submitted that the petitioners herein have got no locus to be arrayed as party to the suit in question inasmuch as the petitioners were transferees pendente lite and had purchased part of the property in the year, 2001, having full knowledge of the pendency of the connected suit and they had filed the petition belatedly in the year 2011 i.e. much after passing of the



judgment dated 15.5.2008 and preliminary decree dated 26.5.2008, after a great delay. It is further submitted that no petition for addition of party can be permitted after passing of the preliminary decree in the suit, hence, the petition of the petitioners under Order 1 Rule 10 has rightly been rejected. It is further submitted that the Respondent No. 11, namely, Sarita Devi is defendant no. 6 in the T.S. No. 416 of 1985 and is a purchaser of part of land in question from the legal heir of Ram Charan Mahto (deceased). Respondent no. 13 Gayatri Devi is defendant no. 8 in the suit and is a purchaser of part of land in question from the legal heir of Ram Charan Mahto (deceased). Similarly the respondent no. 19 Sant Lal Singh is defendant no. 14 in the suit (however, he died during the pendency of the suit and was also substituted by his legal heirs in the court below, hence has been wrongly arrayed as a party) and had also purchased a part of the land in question from the legal heir of Ram Charan Mahto (deceased). All these purchases have been made in the year 1982 itself as is evident from the judgment dated 15.5.2008, passed in the suit itself, contained in Annexure-8 to the writ petition.

17. The learned counsel for the respondent Nos. 11 and 13 has further submitted that the title suit bearing Title Suit No. 416



of 1985 was filed by the legal heir of Beni Mahto, arraying the subsequent purchasers as plaintiffs as against the legal heirs of Ram Charan Mahto and the purchasers from them being the defendants. The said title suit is a partition suit in which the controversy involved is the claim of the legal heir of Beni Mahto. The said Beni Mahto and Ram Charan Mahto, who are brothers, were joint title holders and in possession of the property in question, after the compromise decree dated 22.7.1958 was passed by the Hon'ble High Court in SA no. 1891 /1955. Thus the grievance of the plaintiff was that after the death of Beni Mahto and Ram Charan Mahto, their legal heirs became owner of 5 katha each of the schedule property, therefore, the defendants who are legal heirs of Ram Charan Mahto cannot sell the property in question, beyond their share of 5 katha and accordingly the subsequent purchasers qua the legal heir of Ram Charan Mahto were also made defendants including the answering respondents. Finally, the court below vide judgment dated 15.5.2008 has resolved the controversy, inter alia holding that the sale of property made in the year 1982 in favour of the answering respondent was within the permissible share of the legal heir of Ram Charan Mahto and thus the same is valid. Subsequently, the same was followed by



a preliminary decree dated 26.5.2008.

18. The learned counsel for the respondents has further submitted that the writ petitioners filed an application under Order 1 Rule 10 of C.P.C. on 27.9.2011 (Annexure-7) wherein in para 3 they clearly state that they are purchaser of plot no. 1456 appertaining to M.S. Plot No. 1241 Area- 2 Katha under 2 separate registered sale deed dated 28.11.2001 executed by Sri Pramod Kumar Sinha and Sri Binod Kumar Sinha and Smt. Chinta Ratnakar who are defendant nos. 12, 13 & 10 respectively in the suit. It is further stated in para 4 therein that the said deeds were duly attested by Sri Narayan Mahto plaintiff no. 3 of the suit being one of the legal heir of Beni Mahto and also states that the said plaintiff assured the petitioners that the present suit will be withdrawn. The fact is that the petitioner No.1 is the purchaser from Defendant No. 12 to the aforesaid suit and the petitioner No.2 is the purchaser from Defendant No. 10 to the aforesaid suit by two registered sale deeds dated 28.11.2001.

19. Thus, in sum and substance, the arguments of the learned counsel for the Respondent Nos. 11 and 13 is that since the principal defendant i.e. the vendor of the petitioners herein lost the suit, no useful purpose would be served by permitting the



petitioners to be arrayed as parties to the suit and raise an issue of right, title and interest in the property in question, which cannot be decided in a partition suit and that too after passing of the preliminary decree.

20. The learned counsel appearing for the Respondent No. 2 has submitted that the petition dated 27.9.2011 filed by the petitioners herein has been filed under Order 1 Rule 10 under the wrong provision of the Code of Civil Procedure, 1908, inasmuch as the same provides for striking out or addition of parties, whether as plaintiffs or defendants, whose presence before the court is necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, either upon or without the application of either party, by the court and at any stage of the proceedings. Thus, it is submitted that on this ground alone, the petition of the petitioners dated 27.9.2011 was fit to be rejected. In any case, it is submitted that if the petitioners are aggrieved by the judgment dated 15.5.2008 passed in Title Suit No. 416 of 1985, they could have challenged the same in appeal.

21. At this juncture, the learned counsel for the petitioners has submitted that mere wrong labelling of the provision of law would not make any difference and if the court is vested with



the jurisdiction and is having the source of power, the learned court can obviously pass appropriate orders, accordingly.

22. The learned counsel for the Respondent Nos. 11 and 13, has next submitted, by referring to I.A. No. 3 of 2019 filed in the present case, that the petitioners herein have suppressed the fact that the petitioner no. 1 has sold her entire land ad-measuring one katha by a registered sale deed dated 13.2.2012 in favour of one Sri Sanjay Kumar Gupta whereas the petitioner no. 2 has sold her entire land ad-measuring one katha by another registered sale deed dated 13.2.2012 in favour of Smt. Punam Rani, hence on this ground alone, the present writ petition is fit to be dismissed.

23. I have heard the learned counsel for the parties and perused the materials on record and I find that there is no quarrel or dispute regarding the proposition of law that no period of limitation is prescribed under Order 22 Rule 10 of the Code of Civil Procedure, 1908 inasmuch as the right to apply under the said rule is a continuous right and application can thereafter be made at any stage till the proceedings are pending. Reference, in this connection, be had to the judgment rendered in the case of *Chandra Bai* (supra). It is equally not in dispute that till the passing of the final decree, a partition suit is said to be pending as also unless partition of the suit property is



effected by metes and bounds and the allottees of the shares are put in possession of their respective property, the partition is not complete, hence, preliminary decree, which determines shares, does not bring about the final partition. Reference, in this connection, be had to the judgment rendered by the Hon'ble Apex Court in the case of *Prema* (supra).

24. Now coming back to the present case, this Court finds that the petitioners have admitted in paragraph nos. 9 and 11 of the writ petition that the land in question was sold by Quadri Devi, wife of late Ramcharan Mahton to different persons (proforma defendants/respondents) including proforma defendants/respondent nos. 15 and 16, 17 and 18, who were defendants no. 10 and 11, 12 and 13 respectively in the title suit. It has also been admitted by the writ petitioners that the proforma defendant / respondent no. 15 purchased one katha of land vide registered sale deed dated 20.10.1982 and proforma defendants / respondent nos. 16, 17 and 18 purchased one katha of land vide registered sale deed dated 14.12.1982. The petitioners herein are stated to have purchased one katha of land each from defendants / respondents no. 15 and 16 to 18 who were defendant nos. 10 and 11 to 13 respectively in the title suit, vide two registered sale deeds, both dated 28.11.2001 and



thereafter, they have sold the said pieces of land by two registered sale deeds, both dated 13.2.2012 in favour of Sri Sanjay Kumar Gupta and Smt. Punam Rani, as aforesaid.

25. At this juncture, this Court would like to refer to a decision rendered by the Hon'ble Apex Court, reported in ***AIR 1963 SC 786 (Udit Narain Singh Mahpaharia vs. Additional Member Board of Revenue, Bihar & Anr.)***, paragraph nos. 10 and 11 whereof are reproduced herein below:-

10. In addition, there may be parties who may be described as proper parties, that is parties whose presence is not necessary for making an effective order, but whose presence may facilitate the settling of all the questions that may be involved in the controversy. The question of making such a person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may apply for the impleading of such a party or such a party may suo motu approach the court for being impleaded therein.

11. The long established English practice, which the High Courts in our country have adopted all along, accepts the said distinction between the necessary and the proper party in a writ of certiorari. The English practice is recorded, in



*Halsbury's Laws of England, Vol 11, 3rd Edn.
(Lord Simonds) thus in paragraph 136:*

"The notice of motion or summons must be served on all persons directly affected, and where it relates to any proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any act in relation to the proceedings or to quash them any order made therein, the notice of motion or summons must be served on the clerk or registrar of the court, the other parties to the proceedings and (where any objection to the conduct of the judge is to be made) on the judge.....".

In paragraph 140 it is stated:

"On the hearing of the summons or motion for an order of mandamus prohibition or certiorari, counsel in support begins and has a right of reply. Any person who desires to be heard in opposition, and appears to the Court or Judge to be a proper person to be heard, is to be heard notwithstanding that he has not been served with notice or summons, and will be liable to costs in the discretion of the Court or Judge if the order should be made.....".

So too, the Rules made by the Patna High Court require that a party against whom relief is sought should be named in the petition. The relevant Rules



read thus:

Rule 3. Application under Article 226 of the Constitution shall be registered as Miscellaneous Judicial Cases or Criminal Miscellaneous Cases, as the case may be.

Rule 4. Every application shall, soon after it is registered, be posted for orders before a Division Bench as to issue of notice to the respondents. The Court may either direct notice to issue and pass such interim order as it may deem necessary or reject the application.

Rule 5. The notice of the application shall be served on all persons directly affected and on such other persons as the Court may direct.

Both the English rules and the rules framed by the Patna High Court lay down that persons who are directly affected or against whom relief is sought should be named in the petition, that is all necessary parties should be impleaded in the petition and notice served on them. In "The Law of Extraordinary Legal Remedies" by Ferris, the procedure in the matter of impleading parties is clearly described at p.201 thus

"Those parties whose action is to be reviewed and who are interested therein and affected thereby, and in whose possession the record of such action remains are not only proper, but necessary parties. It is to such parties that notice to show cause



against the issuance of the writ must be given, and they are the only parties who may make return, or who may demur. The omission to make parties those officers whose proceedings it is sought to direct and control, goes to the very right of the relief sought. But in order that the court may do ample and complete justice, and render a judgment which will be binding on all persons concerned, all persons who are parties to the record, or who are interested in maintaining the regularity of the proceedings of which a review is sought, should be made parties respondent."

This passage indicates that both the authority whose order is sought to be quashed and the persons who are interested in maintaining the regularity of the proceeding of which a review is sought should be added as parties in a writ proceeding. A Division Bench of the Bombay High Court in Ahmedalli v. M. D. Lalkaka, AIR 1954 Bom 33 at p 34 laid down the procedure thus:

"I think we should lay down the rule of practice, that whenever a writ is sought challenging the order of a Tribunal, the Tribunal must always be a necessary party to the petition. It is difficult to understand how under any circumstances the Tribunal would not be a necessary party when the petitioner wants the order of the Tribunal to be quashed or to be called in question. It is equally clear that all



parties affected by that order should also be necessary parties to the petition."

A Full Bench of the Nagpur High Court in Kanglu Baula v. Chief Executive Officer, (S) AIR 1955 Nag 49 (FB), held that though the elections to various electoral divisions were void the petition would have to be dismissed on the short ground that persons who were declared elected from the various constituencies were not joined as parties to the petition and had not been given an opportunity to be heard before the order adverse to them was passed. The said decisions also support the view we have expressed.

26. The thrust of arguments of the leaned counsel for the petitioners is that transferees-in-interest of other co-owners acquiring interest during pendency of a partition suit filed by a co-owner is a necessary and proper party in a partition suit filed by a co-owner, hence, the learned trial court has wrongly rejected the petition of the petitioners dated 27.9.2011, by the impugned order dated 30.4.2015. It is also the case of the petitioners that during the pendency of a partition suit, transferee pendente lite of an interest in a part of the suit property has a right to be impleaded as a party and has locus standi to claim equitable partition in final decree proceedings under Section 54 of the Transfer of Property Act, 1882. This



Court is of the opinion that technically, the petitioners are transferee pendente lite, however, whether they have a right to be added as parties to the partition suit, is the issue to be decided in the present proceedings.

27. At this juncture, I would like to refer to the well-settled law to the effect that the broad purpose of Section 52 of the Transfer of Property Act is to maintain status quo unaffected by the act of any party to the litigation pending its determination since if alienations pendente lite are permitted to prevail, it would be impossible to bring an action or suit to a successful termination. In ***Marirudraiah & Others vs. B. Sarojamma & Others***, reported in ***(2009) 12 SCC 710***, the Hon'ble Apex Court has observed that courts are not supposed to encourage pendente lite transactions and regularise their conduct by showing equity in their favour at the cost of co-sharers. The doctrine of lis pendens is expressed in the well-known maxim; '*pendente lite nihil innovature*' which means 'during pendency of any suit regarding title of a property, any new interest in respect of that property should not be created. The effect of the applicability of the doctrine is that it does not annul the conveyance, but only renders it subservient to the rights of the parties to the litigation. The transferee will be bound by the result of the suit or



proceeding, whether or not he had notice of the suit or proceeding.

Section 52 of the Transfer of Property Act incorporates the well-known principle of lis pendens, which was enunciated in *Bellamy v. Sabine* [(1857) 1 De G&J 566 : 44 ER 842] : (ER p. 849), in the following words:-

“It is, as I think, a doctrine common to the courts both of law and equity, and rests, as I apprehend, upon this foundation—that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceeding.”

The doctrine is based upon expediency and it is immaterial whether the transferee pendente lite had or had not any notice of the suit. This doctrine had or "had not notice of the suit" has been fully expounded by the Privy Council in *Faiyaz Hussain Khan v. Prag Narain*, (1907) 29 All 339 PC where their lordship quote with approval the observations of Lord Justice Turner in *Bellamy's* case.

28. This Court would also like to refer to a judgment rendered



by the Hon'ble Apex Court in the Case of ***Amit Kumar Shaw & Anr. vs. Farida khatoon***, reported in ***(2005) 11 SCC 403*** wherein it has been held that a transferee pendente 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. Paragraph no. 16 of the said judgment, rendered in the case of ***Amit Kumar Shaw & Anr.*** (supra) is reproduced herein below:-

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, where 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 22 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 his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.

29. As contended by the learned counsel for the petitioners, though it is true that in a partition suit, a purchaser pendente lite, who has purchased undivided share of a co-sharer is normally impleaded as a party in order to work out equity in his favour in the final decree proceedings for the purposes of providing him an opportunity to protect his rights flowing from the sale deed executed by a co-sharer to the extent of his bigger share in the joint family property, but the courts must be cautious and vigilant and impleadment of a stranger in the partition suit must be for substantial cause and a purchaser pendente lite if impleaded in a partition suit has a very limited right. The limited right of a purchaser pendente lite of the first purchaser from a co-sharer to get equity worked out in his favour, gets exhausted



with his impleadment in the suit and a further alienation of the same right by the purchaser or the purchaser pendente lite does not create a fresh equity or revive the same right in the second purchaser.

30. Considering the aforesaid principle of law laid down in the case of *Bellamy* (supra) as also by the Hon'ble Apex Court in the case of *Amit Kumar Shaw* (supra), *Faiyaz Hussain Khan* (supra) and *Marirudraiah & Others* (supra), this Court is of the opinion that a purchaser pendente lite like the petitioners herein, who have purchased the suit property / a portion thereof from another purchaser / purchaser pendente lite and not from the co-sharer, have no right to equities and thus cannot be impleaded in a partition suit, more so, since the petitioners herein have also alienated the property in question vide registered sale deeds, both dated 13.2.2012 in favour of Sanjay Kumar Gupta and one Smt. Punam Rani. It is clear that the vendors of the petitioners herein are parties in the partition suit and they have also contested the suit, although they themselves are not purchasers pendente lite inasmuch as they had purchased a part of the suit property from the co-sharers through registered sale deeds dated 20.10.1982 and 14.12.1982, i.e much before the filing of the aforesaid Title Suit No. 416 of 1985. Admittedly, the petitioners



are not purchasers from a co-sharer and if at all they have any right, it is only against their vendors who are parties in the suit, as explained hereinabove in the preceding paragraphs, hence, the learned court below by the impugned order dated 30.4.2015 has rightly rejected the petition of the petitioners dated 27.9.2011 for impleading them as parties to the suit. Moreover, this Court finds that though the petitioners had already alienated their interest in the suit property vide two sale deeds dated 13.02.2012, before filing the present writ petition, they had suppressed the said fact and obtained a stay, which also disentitles the petitioners to any relief under an equitable and discretionary jurisdiction of the High Court under [Article 226](#) of the Constitution of India. Thus, I do not find any merit in the present writ petition, accordingly, the same stands dismissed.

31. It would be unjust to the petitioners if the judgments referred to by the learned counsel appearing for them are not dealt with. First of all, taking up the judgment rendered by the Hon'ble Apex Court in the case of *Sharadamma* (supra), it would suffice to state that the principle of law enunciated therein deals with the right of assignors to continue proceedings even after assignment of property during pendency of proceedings, however, in the present case, the petitioners are not



assignors, hence, the said judgment is distinguishable in the facts and circumstances of the present case. As far as the judgment rendered by the Hon'ble Apex Court in the case of ***Dhanlaxmi*** (supra), is concerned, the same has held that the transferees in interest of other co-owners acquiring interest during pendency of partition suit filed by a co-owner are necessary and proper parties in a partition suit filed by a co-owner, however, as far as the present case is concerned, the petitioners are not transferees in interest of the co-owners of the suit property, hence, the said judgment has got no applicability, as far as the present case is concerned and is also clearly distinguishable in the facts and circumstances of the present case. Now coming to the judgment rendered in the case of ***Khemchand Shankar Chaudhari*** (supra), referred to by the learned counsel for the petitioners, the same pertains to participation of a person, on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding, in execution proceedings even though the name of such a person may not have been shown in the decree, preliminary or final, whereas in the present case, impleadment has not been sought by the petitioners in execution proceedings, hence the said Judgment is distinguishable in the facts and



circumstances of the present case.

32. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above in the preceding paragraphs, this Court does not find any infirmity in the impugned order dated 30.4.2015 passed by the learned Sub-Judge II, Patna City in Title Suit No. 416 of 1985, hence, the writ petition stands dismissed.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	23.8.2019
Uploading Date	19.08.2020
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