

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.753 of 2018

Jaglal Sharma Son of Late Jainath Sharma, Resident of Village- Bishunpura,
P.S.- Khoelwar, District- Bhojpur. Petitioner/s

Versus

1. Nageshwari Devi and Ors Wife of Late Ram Niwas Sharma, Resident of Village- Bishunpura, P.S.- Khoelwar, District- Bhojpur at present resident of Mohalla- Shivganj, P.S.- Ara Town, District- Bhojpur.
2. Satyanand Rai, Son of Late Raghunath Rai, Resident of Village- Ramnagar, P.S. and Anchal- Bihta, District- Patna.
3. Ramashankar Rai, Son of Late Chhathu Yadav, Resident of Village P.O.- Birampur, P.S.- Koelwar, District- Bhojpur.
4. Savitri Devi, Wife of Sri Niwas Sharma,
5. Krishna Kumar Sharma,
6. Ravishankar Sharma, Both sons of Late Jainath Sharma,
7. Buchi Devi, Wife of Late Jainath Sharma,
8. Ajit,
9. Ramu,
10. Shyamu, All sons of Late Sri Bhagwan Sharma, All resident of Village- Bishunpura, P.S.- Koelwar, District- Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gaurav Govind, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 28-07-2022 Heard Mr. Gaurav Govind, learned counsel for the
petitioner.

2. Petitioner is defendant in the suit. The suit has been filed by respondent no.1/plaintiff for declaration of title and claiming to be the exclusive property of the plaintiff.

3. By way of impugned order, the learned trial court has allowed the application for impleadment as a party filed on behalf of the respondent Nos. 2 and 3, Satyanand Rai and Ramashankar Rai respectively who claim to be the purchasers *pendente lite* of the portion of the suit property from the plaintiff.



4. Learned counsel for the petitioner submits that the suit land/property has been purchased by the intervener/respondent vide registered sale-deed dated 26.04.2013 without taking leave of the court and accordingly, in view of the judgment as reported in **2018(2) PLJR 532 [Sukumari Devi & Ors v. Ramanand Prasad Singh]** passed by this Court, the purchase made by the intervener/petitioners is hit by Section 52 of the Transfer of Property Act and therefore, they cannot be added as parties. He further submits that petition for impleadment as parties in the suit has been filed under Order 1 Rule 10 and not under Order 22 Rule 10 of CPC. As such their prayer for impleadment was fit to be rejected by learned trial court.

5. I have heard learned counsel for the petitioner and have gone through the impugned order. It appears that admittedly intervener/petitioners i.e., respondent Nos. 2 and 3, 1st Set herein are the purchasers *pendente lite* who filed the petition under Order 1 Rule 10 (2) CPC for their impleadment as parties in the suit on the ground that they have purchased the suit property and are having substantial interest in the same. The plaintiff/respondent no.1 is not opposing the prayer of interveners. Order 22 Rule 10 CPC says like this:-



“ **10. Procedure in case of assignment before final order in suit.** (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)

6. Hon’ble Supreme Court in judgment reported in the case of *Thomsan Press India Ltd v. Nanak Builders and Investors* reported in (2013) 5 SCC 397 and in the case of *Ramjee Bhai Patel v. Anandi Bai Rama & Ors.* as reported in (2018) 15 SCC 614 has held that alienee *pendente lite* can be impleaded as party under Order 22 Rule 10 of the CPC if the interest is substantial.

7. Merely because the wrong provision of law has been quoted in an application for impleadment shall not disentitle the interevener/petitioners from the relief. Accordingly, taking into consideration the above mentioned fact and the law laid down by the Hon’ble Supreme Court, I find no merit in this application. The same is, hereby, rejected.

(Anil Kumar Sinha, J)

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