

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1137 of 2017

1. Anurag Kumar Pandey S/o Harimohan Pandey, null
2. Niraj Kumar Pandey, S/o Harimohan Pandey,
3. Anant Kumar Pandey, S/o Harimohan Pandey, All are resident of Village-Turwaha Tola Bakhar Pandey, Post Gopalganj, P.S.- Gopalganj, District-Gopalganj.

... .. Petitioner/s

Versus

1. Basant Kumar S/o Yadeshwari Prasad Verma, resident of Village- Harukhar, Post- Bishnu Sugarmil, P.S. and District- Gopalganj.
2. Harimohan Pandey, S/o Late Mahendra Pandey, resident of Village-Turwaha Tola Bakhat Pandey, Post- Gopalganj, P.S.- Gopalganj, District-Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ranjan Kumar Dubey, Advocate Mr. Kumar Gaurav, Advocate Mr. Shashank Kashyap, Advocate Mr. Ashish Anand, Advocate
For the Respondent/s	:	None

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 27-11-2024

Heard learned counsel for the petitioners.

2. Despite service of notice, none appeared on behalf of the respondents.

3. The petitioners are aggrieved by the order dated 24.03.2017 passed by learned Sub Judge-XIII, Gopalganj in Title Suit No. 214 of 1999, whereby and whereunder the learned Sub Judge rejected the petition dated 12.06.2015 filed on behalf of the petitioners under Order 1 Rule 10(2) of the Code of Civil



Procedure (in short 'the Code').

4. Learned counsel for the petitioners submits that the respondent no. 1 is the plaintiff of Title Suit No. 214 of 1999 which has been filed against respondent no. 2 for specific performance of contract for executing a sale deed with regard to the suit land. Learned counsel further submits that the case of respondent no. 1 is that he entered into an agreement with defendant/respondent no. 2 for exchange of land since the money given to the defendant/respondent no. 2 by the plaintiff to the tune of Rs.95,000/- was not returned. Learned counsel further submits that initially the defendant demanded loan from the plaintiff for some construction work and he assured him to return the money within two months. As the defendant could not return the money, a complaint case was filed against the defendant by the plaintiff and some amount was returned and it was agreed between the parties that rest amount will be returned within next two months and if the same was not returned then the defendant will execute a sale deed in respect of the suit land and accordingly, compromise petition was filed in the said case. In this manner, an agreement was entered into by the plaintiff and the defendant. Learned counsel further submits that as money was not returned by the defendant, the plaintiff filed suit



for specific performance. However, the defendant claimed that he never entered into agreement and whatever has been brought on record in the form of agreement, it was under coercion of the plaintiff. During pendency of the suit, the petitioners, who are sons of the defendant, who had been staying outside in course of their study, came to know about the suit and as the suit property is joint family property, the petitioners moved an application for impleadment under Order 1 Rule 10(2) of the Code. The petitioners have stated in the intervention petition that the plaintiff and defendant are friends and they wanted to grab the share of the petitioners in the joint family property. The learned trial court after hearing the parties rejected the application filed by the petitioners under Order 1 Rule 10(2) of the Code vide order dated 24.03.2017 which is under challenge before this court.

5. Learned counsel further submits that the impugned order has been passed by the learned trial court rejecting the application for impleadment only on the ground that the petitioners being the sons of defendant might be knowing about the pendency of the suit and as the petitioners did not move earlier before the court, their application for impleadment was rejected. But there is no material on record to show that the



petitioners were having knowledge of the pending suit. Learned counsel further submits that though it is a suit for specific performance of contract, as the joint family property is involved and the petitioners and defendant are having same right as joint family members. It has been admitted by the plaintiff in the rejoinder filed against impleadment petition that the suit property is joint family property. The petitioners have direct interest in the pending suit and its outcome and as such no effective decree can be passed in absence of other joint owner. Learned counsel further submits that the defendant/respondent no. 2 could only agree to transfer the property to the extent of his share and could not alienate the share of the petitioners and if any, sale deed will be executed pursuant to the agreement decree, the petitioners would be directly affected and they would have remedy to challenge such decree in execution proceeding even under Order 21 Rule 97 of the Code. In order to minimize the litigation, the learned trial court ought to have impleaded the petitioners as defendants in the suit for specific performance. Learned counsel referred to a decision of Hon'ble Supreme Court in the case of *Moresnar Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D) thr. LRs. and others*, reported in *AIR 2022 SC 4710*, wherein in the similar circumstances, the



Hon'ble Supreme Court upheld the order of impleadment of the co-sharer in the suit of specific performance. Thus, learned counsel submits that the impugned order is not sustainable and the same be set aside.

6. Having regard to submission made on behalf of learned counsel for the petitioners, the fact is apparent that the suit property is a joint family property. The case of the petitioners is that being co-sharer, they should be heard before any orders are passed in the suit for specific performance. Normally, in a case of specific performance, on face of it, 3rd party is not a necessary or property party. However, in the present case when the claim of the petitioners is based on the fact that they are co-sharer in the joint family property, in which one of the co-sharers, their father, entered into an agreement and pursuant to the same, if the suit is decreed, then the petitioners' interest would be affected. Though the plaintiff has not claimed any relief against the petitioners, still it is the fact that no effective decree could be passed in absence of the petitioners, who could always challenge such decree being co-sharer/joint owner and having a direct interest in the same. Since it is the admission of the plaintiff that the suit property is joint, naturally the other co-sharers would be proper party in this case. Placing



reliance on the case of *Moreshtar Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D) thr. LRs. and others (supra)* and considering the similarity of issue, I think that the petitioners have made out a case in their favour and hence, the impugned order dated 24.03.2017 cannot be sustained and the same is set aside and the petition dated 12.06.2015 filed by the petitioners is allowed.

7. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.11.2024
Transmission Date	NA

