

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.219 of 2020

Pawan Kumar Tiwary, Son of Daib Dayal Tiwari, Resident of Village-Sunderpur Barja, P.S. Bihiya, District- Bhojpur at Ara (Bihar).

... .. Petitioner/s

Versus

- 1.1. Smt. Jayanti Devi Wife of Late Lakshman Upadhyay Resident of Village-Sundarpur Barja, P.S- Bihiya, District- Bhojpur(Bihar).
- 1.2. Udyaman Upadhyay Son of Late Lakshman Upadhyay Resident of Village-Sundarpur Barja, P.S- Bihiya, District- Bhojpur(Bihar).
- 1.3. Parshuram Upadhyay Son of Late Lakshman Upadhyay Resident of Village-Sundarpur Barja, P.S- Bihiya, District- Bhojpur(Bihar).
- 1.4. Ganesh Upadhyay Son of Late Lakshman Upadhyay Resident of Village-Sundarpur Barja, P.S- Bihiya, District- Bhojpur(Bihar).
- 1.5. Ghanshyam Upadhyay Son of Late Lakshman Upadhyay Resident of Village- Sundarpur Barja, P.S- Bihiya, District- Bhojpur(Bihar).
- 1.6. Bijay Lakshmi Devi Daughter of Late Lakshman Upadhyay and Wife of Jiya Lal Chaubey Resident of Village - Tulsi Harigaon, P.O. - Harigaon, P.S. - Dulhinganj, District - Bhojpur (Bihar).
- 1.7. Munni Devi Daughter of Late Lakshman Upadhyay and wife of Pintu Pandey, Resident of Vilalge- Gopalpur, P.O.- Gopalpur, P.S. - Koilwar, District - Bhojpur (Bihar).
- 1.8. Rinku Devi Daughter of Late Lakshman Upadhyay and wife of Ashok Mishra, resident of Village - Nargada, P.O. - Belauti, P.S. - Shahpur, District - Bhojpur (Bihar).
- 1.9. Sandhya Devi Daughter of Late Lakshman Upadhyay and wife of Santosh Ojha, Resident of Village - Karja, P.O. - Umraonganj, P.S. - Bihiya, District - Bhojpur (Bihar).
- 1.10. Baby Devi Daughter of Late Lakshman Upadhyay and wife of Biraj Tiwari, Resident of Village Damodarpur, P.O. - Damodarpur, P.S. - Shahpur, District - Bhojpur (Bihar).
2. Raj Muna Devi Wife of Late Ras Bihari Tiwary Resident of Village-Sunderpur Barja, P.S. Bihiya, District- Bhojpur at Ara (Bihar).
3. Shivilakh Tiwary Son of Late Ras Bihari Tiwari Resident of Village-Sunderpur Barja, P.S. Bihiya, District- Bhojpur at Ara (Bihar).
4. Ramlakh Tiwary Son of Late Ras Bihari Tiwari Resident of Village-Sunderpur Barja, P.S. Bihiya, District- Bhojpur at Ara (Bihar).
5. Vakil Tiwary Son of Late Ras Bihari Tiwari Resident of Village- Sunderpur Barja, P.S. Bihiya, District- Bhojpur at Ara (Bihar).
6. Sunil Tiwary Son of Late Ras Bihari Tiwari Resident of Village- Sunderpur Barja, P.S. Bihiya, District- Bhojpur at Ara (Bihar).
7. Binod Tiwary Son of Late Ras Bihari Tiwari Resident of Village- Sunderpur Barja, P.S. Bihiya, District- Bhojpur at Ara (Bihar).



8. Sanjay Tiwary Son of Late Ras Bihari Tiwari Resident of Village- Sunderpur Barja, P.S. Bihia, District- Bhojpur at Ara (Bihar).

.. ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.S. Dvivedi, Sr. Advocate Mr. Parth Gaurav, Advocate Mr. Ashutosh Kumar Pandey, Advocate Mr. Kunal Aryan, Advocate
For the Respondent/s	:	Mr. K.N. Chaubey, Sr. Advocate Mr. Jeetendra Narayan, Advocate Mr. Rishikesh Ojha, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 13-09-2024

The present petition has been filed under Article 227 of the Constitution of India challenging the order dated 09.12.2019 passed in Title Suit No. 106 of 1994 by the learned Sub Judge, Jagdishpur, Bhojpur whereby and whereunder the learned Sub Judge allowed an intervener application dated 22.11.2019 filed by the interveners under Order 1 Rule 10 (2) read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

2. Briefly stated, the facts of the case are that the petitioner/ plaintiff has filed Title Suit No. 106 of 1994 for partition of Schedule 1 property of the plaint. The plaintiff has also sought declaration in respect of a Will executed by one Samrajo Kunwar to be null and void. The Title Suit No. 106 of 1994 remained pending for quite long time and, thereafter, the parties entered into a compromise and, accordingly, the



compromise petition was filed in the aforesaid title suit. Meanwhile, the interveners/ petitioners/ respondent nos. 2 to 8, claiming themselves to be purchasers, from the original defendant, namely Laxman Upadhyay, of a part of scheduled land of Title Suit No. 106 of 1994, filed an intervener petition under Order 1 Rule 10 (2) read with Section 151 of the Code on 22.11.2019. Both the plaintiff and the original defendant filed their rejoinder on 27.11.2019 opposing the intervener petition. The learned trial court, after hearing the parties, allowed the intervener application vide order dated 09.12.2013, which has been challenged in the instant civil miscellaneous petition.

3. Mr. S.S. Dvivedi, learned senior counsel appearing on behalf of the petitioner vehemently contended that the impugned order is not sustainable and it has been passed in an arbitrary manner. The impugned order has been passed illegally against the settled principles of law. The learned trial court ignored the proposition of law that while considering a petition under Order 1 Rule 10 (2) of the Code, the controversy raised between the parties to the litigation should be looked into and not the question/controversy between the parties to the suit and third parties. The learned trial court has also not considered that the purchasers were having knowledge of the suit since they purchased the suit property which is a small portion of the total



property and were seeking to enforce their right, both against the plaintiff and the defendant and such investigation is beyond the scope of the suit.

4. Mr. Dvivedi further submitted that if the purchasers were having knowledge, even if there is allegation of collusion between the plaintiff and the defendant to defeat the interest of the purchasers, the dispute raised by the purchasers cannot be adjudicated in the present suit.

5. Mr. Dvivedi further submitted that one Rajroop Tiwari, who was the common ancestor, was having three sons, namely Manshi Tiwari, Doma Tiwari and Bhikhari Tiwari. Rajroop Tiwari had two marriages and Manshi Tiwari was the son of first wife whereas Doma Tiwari and Bhikhari Tiwari were sons of second wife. Subsequently, Manshi Tiwari got separated with his $\frac{1}{3}$ share and Doma Tiwari and Bhikhari Tiwari got $\frac{2}{3}$ share of Rajroop Tiwari from the joint family property. Doma Tiwari died issue-less in jointness with Bhikhari Tiwari and in this manner $\frac{1}{3}$ share of Manshi Tiwari continued in his possession, whereas Bhikhari continued to hold $\frac{2}{3}$ share of his joint family property. Manshi Tiwari had two sons, namely Shiv Dayal Tiwari and Daib Dayal Tiwari. The original plaintiff Chandramani Kunwar was the wife of Daib Dayal Tiwari, who filed the case on her behalf as well as for original



plaintiff no.2 Pawan Kumar, minor son of Brij Bihari Tiwari. On the other hand, Samrajo Kunwar is the wife of original defendant-Shiv Dayal Tiwari. Bikhari Tiwari had six sons including Brij Bihari Tiwari, who has five sons. The original plaintiff no.2 Pawan Kumar is one of the biological sons of Brij Bihari Tiwari, who was taken in adoption by plaintiff no.1 Chandramano Kunwar. The plaintiff no.2 had been staying with plaintiff no.1 since his childhood. But the adoption could not take place during the lifetime of Daib Dayal Tiwari and the proceeding of adoption was completed by original plaintiff no.1 on 11.11.1993. Subsequently, registered adoption deed was also prepared on 14.01.1994. In this manner, the plaintiffs became entitled for $\frac{1}{2}$ share along with the defendant no.1. During pendency of the partition suit, wife of Shiv Dayal Tiwari, namely Samrojo Kuer, executed a gift deed, in the name of defendant no.2, Laxman Upadhayay, without permission of the court and without permission of the consolidation officer, which is a void document. After death of Shiv Dayal Tiwari and Samrojo Kuer, who died issue-less, the entire suit property would now devolve upon the plaintiffs.

6. Mr. Dvivedi further submitted that the interveners/petitioners have purchased a portion of the suit property vide six sale deeds dated 23.08.2004 to 25.08.2005 from defendant



Laxman Upadhyay. Mr. Dvivedi further submitted the claim of the intervenors that they were not having knowledge of the pendency of the suit is completely wrong and incorrect statements. The defendant Laxman Upadhyay, the vendor of the intervenors, is not a family member of the plaintiffs or the defendant Shiv Dayal Tiwari. The title suit was instituted in the year 1994 and wife of Shiv Dayal, Samrajo Kuer had executed the gift deed in the year 2001, during the pendency of the suit and, thereafter, sale deeds were executed in the year 2005. Since the vendor of the intervenors is not the family member of the petitioner as he is son of the brother of Samrajo Kuer, any prudent person would check for his title and ascertain how such a person has been claiming title and transferring the land. This aspect of the matter goes on to show that the intervenors have purchased litigation as they were knowing all along about the dispute over the title of the defendant Laxman Upadhyay and the pending litigation.

7. Mr. Dvivedi further submitted that it was a suit for partition and the matter has been compromised between the parties, so there was no scope for intervenors to get impleaded in the suit at this stage. The petition has been filed after 25 years of the execution of sale deeds and it smacks of malafide. Moreover, when the matter is at the stage of compromise and



the interveners claim right over only a portion of the suit property, such intervener/purchasers cannot claim to represent the entire interest of the defendant in the suit property and they are bound by the acts of their vendor, in the present case, the defendant Laxman Upadhyay. Even if there is collusion with the plaintiff and defendant, the interest of the interveners cannot be decided in the present suit. If the defendants admit the title of the plaintiff, nothing remains in the matter for the purchasers from the defendant. Because, in this manner, the intervener/purchasers would be seeking to enforce their right in the suit property, both against the plaintiff and the defendant and such investigation is definitely beyond the scope of the present suit. Mr. Dvivedi referred to paragraphs 13, 14 & 15 of the decision of this Court in the case of ***Om Prakash Sahu & Ors. vs. Sarju Prasad*** reported in ***2014(1) PLJR 178***. Mr. Dvivedi further relied on paragraphs 16 and 17 of the same judgment on the point that at the time of compromise, the court has only to see that the compromise is lawful and the legality of the compromise is clearly not to be judged from the standpoint of a *pendente lite* purchaser who has purchased the part of the suit property having full knowledge of the pendency of the suit. The Court has no jurisdiction to adjudge and declare compromise petition accepted by the parties to the suit as unlawful even if it



affects the rights or interests of a stranger to the suit.

8. Mr. Dvivedi further submitted that the purchaser is not remediless as he can move for appropriate relief to establish his right and can also assail the validity of the compromise. Mr. Dvivedi further referred to another decision of this Court in the case of ***Md. Sahood Alam & Ors. vs. Md. Nayyer @ Munna & Ors.*** reported in ***2016 (1) PLJR 307*** on the point that if the vendor himself has challenged the legality of execution of sale deeds in favour of the interveners and there is dispute *inter se* between the defendants, such dispute cannot be decided in a suit filed by the plaintiff.

9. Mr. Dvivedi further submitted that Order 1 Rule 10 of the Code is concerned with the jurisdiction of the Court and not the right of a party for being added as defendant. If the interveners are not necessary party and in absence of the interveners, if the dispute raised between the parties can be effectively decided by the Court, the Court should not add a person whose presence is not required for just decision of the case, if the interveners are raising another controversy apart from the controversy between the plaintiff and the defendants for which there is neither any pleadings nor any evidence. On the similar proposition, Mr. Dvivedi further referred to the decision of this Court in the case of ***Birendra Tiwari vs.***



Sarveshwar Tiwari & Ors. reported in ***2013 (3) PLJR 561.***

10. Mr. Dvivedi further submitted that by filing a counter claim, the litigation cannot be converted into some sort of an inter-pleader suit and referred to the decision of the Hon'ble Supreme Court in the case of ***Rohit Singh & Ors. vs. State of Bihar (Now State of Jharkhand) & Ors.*** reported in ***2007 (1) PLJR 232 (SC).***

11. Mr. Dvivedi further submitted that Section 52 of the Transfer of Property Act incorporates the well known principle of *lis pendens*. It is well settled that the doctrine of *lis pendens* does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision of the suit and referred to the decision of the Hon'ble Supreme Court in the case of ***Vinod Seth v. Devinder Bajaj*** reported in ***(2010) 8 SCC 1.***

12. The contention made on behalf of the petitioner has been vehemently opposed by Mr. K.N. Chaubey, learned



senior counsel appearing on behalf of the respondent nos. 3 to 8. Mr. Chaubey started his argument with discussion on nature and scope of power of this Court under Article 227 of the Constitution of India. Mr. Chaubey submitted that the jurisdiction is supervisory in nature and the same cannot be exercised like a “*bull in a china shop*”, to correct all errors of judgment of a court, or tribunal, acting within limits of its jurisdiction. Correctional jurisdiction can be exercised where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law and justice. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. On this aspect of the matter, Mr. Chaubey has placed reliance on the decision of the Hon’ble Supreme Court in the case of ***Jai Singh and Ors. vs. Municipal Corporation of Delhi and another*** reported in ***(2010) 9 SCC 385***.

13. Mr. Chaubey further submitted that the interveners have a right to be impleaded as party even though the interveners may be transferee *pendente lite*. In this regard, Mr. Chaubey referred to the decision of the Hon’ble Supreme Court in the case of ***Amit Kumar Shaw and another vs. Farida Khatoon and another*** reported in ***AIR 2005 SC 2209*** wherein the Hon’ble Supreme Court held that transferee *pendente lite*



can be added as proper party if his interest in the subject matter of 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 outcome of litigation and so he should be impleaded as party. Mr. Chaubey further referred to the decision of this Court in the case of ***Bal Mukund Singh vs. Gautam Singh and Ors.*** reported in **2009 (3) PLJR14** wherein learned Single Judge of this Court after considering various decisions of the Hon'ble Supreme Court held that a transferee *pendente lite* has a right to be impleaded as a party.

14. Mr. Chaubey further submitted that the plaintiff and the defendant have come into collusion and they want to defeat the interest of the interveners. The compromise is collusive and fraudulent and fraud and justice cannot go together. The averments made in the compromise petition are against the pleadings and evidence led by the original defendant Laxman Upadhyay. In collusion with each other, the plaintiff and the defendants want to compromise the suit and also want to get the gift deed dated 10.01.2001 declared null and void so that the sale deeds executed in favour of the interveners would become non-est. Hence, in order to safeguard their interest, the respondent nos. 3 to 8 are necessary parties. If the interveners are not allowed to be impleaded, there would be multiplicity of



the litigation relating to the same subject matter of the land.

15. Mr. Chaubey further referred to the Constitution Bench decision of the Hon'ble Supreme Court in the case of ***State of Orissa vs. Sudhansu Sekhar Misra and Ors.*** reported in ***AIR 1968 SC 647*** wherein the Hon'ble Supreme Court held that a decision is only an authority for what it actually decides and further held that what is of the essence in a decision is its ratio and not every observation found therein nor that logically follows from the various observations made in it. The Hon'ble Supreme Court quoted Halsbury LC in ***Quinn vs. Leathem, 1901 AC 494.***

“Now before discussing the case of Allen v. Flood, (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every



lawyer must acknowledge that the law is not always logical at all”.

16. Mr. Chaubey further submitted that authorities cited by Mr. Dvivedi must be considered in the aforesaid context and facts and circumstances of the case as there cannot be any universal application of the decisions cited by Mr. Dvivedi.

17. Thus, Mr. Chaubey submitted that there is no infirmity in the impugned order and the same needs no interference by this Court.

18. I have considered the submission made on behalf of the parties and also facts and circumstances of the case.

19. The interveners are purchasers *pendente lite* and it has been the contention of the petitioner that the interveners have been watching the proceeding from the sidelines and they have purchased the litigation as they have all along been knowing about the pending litigation of the parties to the suit. The other aspects on which the order of the learned trial court has been assailed is that at the stage of compromise between the plaintiff and the defendant, a third party has no role. It has also been submitted that the defendant has admitted the claim of the plaintiff, being vendee of the defendant, the intervener has only option to seek enforcement of his right against his vendor in a



separate proceeding. Otherwise, dispute *inter se* between the defendants could not be decided in the suit of the plaintiff.

20. In the background of the objections raised by the petitioner, let us examine the law in this regard.

21. Order 1 Rule 10(2) of the Code provides as under:-

“10 (2). Court may strike out or add parties – The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any 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.”

22. Order 1 Rule 10 (2) of the Code is exception to the general rule that the plaintiff, being *dominus litis*, is free to choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. As a consequence, a person who is not a party has no right to be impleaded in the suit against the wishes of the plaintiff. This exception provides for impleadment of proper or necessary party and



the court has been discretion to add such party.

23. The Hon'ble Supreme Court in the case of ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.***, reported in ***(2010) 7 SCC 417*** has held that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a necessary party is not impleaded, the suit itself is liable to be dismissed. On the other hand, a proper party is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. It has been further held that if a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. It has further been held that Order 1 Rule 10 (2) CPC is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding.

24. Now, on the facts of the case, it is evident that the petitioner is a purchaser *pendente lite* and if the contention of the learned senior counsel for the petitioners is to be accepted, then the interveners should be left to suffer the consequences for



purchasing the litigation. But there could not be any denial of the fact that if the interveners have purchased the part of the suit property, they have acquired sufficient interest in the outcome of the suit. Moreover, the interveners could not be faulted for not joining the suit earlier in time as they can always take the defence that the suit was being properly prosecuted by their vendor. As soon as they came to know about the compromise of the plaintiff and the defendants affecting their rights, they moved their intervener petition. Admittedly, the vendor through the compromise has relinquished his right and admitted the claim of the plaintiff. In these circumstances, it is more necessary that the interveners should be allowed to be impleaded as party in order to safeguard their interest.

25. The Hon'ble Supreme Court in the case of ***Sumtibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)***, reported in ***(2007) 10 SCC 82***, has held that a party having a semblance of interest in the suit property could be impleaded as a party in the suit.

26. Admittedly, the interveners have purchased the property and their vendor has been trying to relinquish his claim and by his act, he would be extinguishing the rights of his vendees-interveners.

27. So far as objection on the ground of *lis pendens* is



concerned, the Hon'ble Supreme Court in the case of ***Amit Kumar Shaw*** (supra) 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 and he is entitled to be impleaded in the suit or other proceedings. However, a caveat has been added that 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. It has been further held that a transferee *pendente lite* to the extent he has acquired interest from the defendant is vitally interested in the litigation. Thus, an alienee *pendente lite* would ordinarily be joined as a party to enable him to protect his interests.

28. The joining of alienee *pendente lite* also takes care of *inter se* dispute of the defendants, if defendant-vendor is no longer willing to continue with the suit having lost interest.

29. If the parties to a suit are coming to a settlement having entered into a compromise, there seems no scope for any third party intervener in such situation. However, when the rights of the interveners are being surrendered, it would be unjust to leave the interveners out of the proceeding and ask such interveners to chart their independent course to assert their rights.

30. Making a cumulative reading and considering the



peculiar facts of the case, I am of the considered view that the learned trial court has not committed any illegality or irregularity and there appears no error of jurisdiction so as to interfere with the impugned order and hence, the impugned order dated 09.12.2019 passed by learned Sub Judge, Jagdishpur, Bhojpur in Title Suit No. 106 of 1994 is affirmed.

31. As a result, the instant petition stands dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	22.07.2024
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