

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1097 of 2017

1. Mosmat Lilawati Devi, W/o late Om Prakash Kashyap
2. Santosh Kumar Kashyap
3. Sanjay Kumar Kashyap
4. Vijay Kumar Kashyap
5. Sunil Kumar
6. Ajay Kumar Kashyap All Sons of late Om Prakash Kashyap
7. Manju Devi
8. Anju Devi Both D/o Om Prakash Kashyap All resident of Mohalla- Khilauganj, Police Station- Sasaram, District- Rohtas.
9. Chhatiya Devi W/o Chandra Chaudhary Resident of Mohalla- Kila, Police Station- Sasaram, District- Rohtas.

... .. Petitioner/s

Versus

1. Sumendra Devi, W/o late Jagdish Ram
2. Ashok Kumar
3. Thakur Kumar
4. Mahabir Kumar
5. Shabir Kumar S/o late Jagdish Ram All resident of Mohalla- Dalelganj, Police Station- Sasaram, District- Rohtas.
6. Laxmina Devi W/o Saharsa Kumar, D/o late Jagdish Ram
7. Kamlawati Devi W/o Santosh Kumar D/o late Jagdish Ram
8. Guriya Devi D/o late Jagdish Ram Respondent no. 6 to 8 resident of Village- Mirzapur, P.O. P.S.- Mirjapur, District Bhadohi, U.P..
9. Urmila Devi W/o Kali Ram, D/o late Jagdish Ram Resident of Village- Bishrampur, P.O. P.S. Bishrampur, District- Garhwa, Jharkhand.
10. Nilam Devi W/o Anil Kumar, D/o late Jagdish Ram Resident of Town Garhwa, P.O. P.S. District- Garhwa, Jharkhand.
11. Shanti Devi W/o Devbandh Singh
12. Jitendra Singh
13. Arvind Kumar Singh Both Son of Dev Bansh Singh
14. Bhola Singh Son of late Laxuman Singh
15. Pratima Devi W/o Bhim Singh
16. Kalyani Devi W/o Sita Ram Mahto
17. Sunaina Devi W/o Kailash Singh
18. Kailash Singh S/o Ram Nandan Singh
19. Ujjwal Kumar



20. Himanshu Kumar Both Minor Sons of late Bhim Singh under the guardianship Pratima Singh (Mother).
21. Sonam Devi W/o Surya Bhan Singh, D/o late Bhim Singh
22. Sugandha Kumari
23. Sanjana Kumari Both D/o late Bhim Singh
24. Anjali Kumar Minor Daughter of late Bhim Singh under the guardianship Pratima DeviMother.
25. Baljeet Singh Son of Gopal Singh
26. Baikunth Singh Son of late Rma Bachan Singh
27. Sheo Chandra Prasad S/o Jangbahadur Prasad Respondent no. 11 to 27 mohalla- Dalelganj Sasaram, Police Station- Sasaram, District- Rohtas.
28. Most. Asha Devi W/o late Dashrath Singh
29. Sachita Nand Singh
30. Viveka Nand Singh
31. Karuna Singh
32. Rama Nand Singh
33. Parma Nand Singh
34. Daya Nand Singh
35. Satya Nand Singh All Sons of late Dashrath Singh Respondent No. 28 to 31 resident of Mohalla- Dalelganj Sasaram, Police Station- Sasaram, District Rohtas.
36. Malit Kuer W/o late Harihar Mahto
37. Jitendra Mahto
38. Sri Ram Mahto Both S/o late Harihar Mahto
39. Manju Devi D/o late Harihar Mahto Respondent no. 36 to 39 resident of Mohalla- Bauliya Road, P.O. and Police Station- Sasaram, District Rohtas.
40. Sanju Devi D/o late Harihar Mahto, W/o Prem Singh Resident of Village-Beda, P.O. Police Station- Sasaram, District- Rohtas.
41. Madhu Devi D/o Late Harihar Mahto, W/o Prakash Singh (Pramod Singh) Resident of Mohalla- Mohan Bigha, Police Station - Dehri, Rohtas.
42. Seema Devi D/o late Harihar Mahto, W/o Mithlesh Singh Resident of Village-Malu Kuan, P.O. P.S. Pira, District Bhojpur.
43. Priyanka Devi D/o late Harihar Singh, W/o Rahul Singh Resident of Village-Dhanpurwa, P.O. P.S.- Sasaram, District- Rohtas.
44. Rehna Devi D/o late Harihar Mahto, W/o Shiv Jee Singh Resident of Village- Gopi Bigha P.O. and Police Station- Dehri, District- Rohtas.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Tiwary, Advocate
Mr. Abhijeet Prabhat, Advocate



For the Respondent/s : Mr.Rajive Ranjan Singh, Advocate
Mr. Vikalp, Advocate
Mr. Vinay Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 22-10-2024

Heard learned counsels for the respective parties.

2. The present petition has been filed under Article 227 of the Constitution of India for quashing the order dated 13.04.2017 passed by learned Sub Judge-IV, Rohtas in Title Suit No. 68 of 2001 whereby and whereunder two petitions, both dated 16.11.2016, of the petitioners for their impleadment under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') have been rejected.

3. The learned counsel for the petitioners submits that the petitioners are purchasers of purchasers of the suit land. The petitioners were having not any knowledge of the pending litigation. The learned trial court has rejected the applications for impleadment only on the ground that since purchases have been made during pendency of the present suit and also evidence of defendants was being recorded, the impleadment at the stage would hamper the course of adjudication of the instant matter. The learned counsel further submits that the learned trial court has not considered the fact that if the petitioners were having any semblance of interest, they are necessary or proper



parties. The learned counsel further submits that the learned trial court has further rejected the impleadment petitions on the ground that if such impleadments are allowed, numerous persons would come to intervene claiming themselves to be purchasers.

4. The learned counsel appearing on behalf of the plaintiffs/respondents submits that he has no objection if the petitioners are made parties.

5. I have given my thoughtful consideration to the submission of the parties.

6. Order 1 Rule 10 (2) of the Code reads 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.”

7. 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 discussed the law relating to impleadment of the parties. It will be relevant to quote paragraphs 13, 14, 15, 22, 25 & 27 of the said judgment:-

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may 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. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

“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.”

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. 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. 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. 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.



The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule 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. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.

25. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because



he is a proper party.

27. On a careful examination of the facts of this case, we find that the appellant is neither a necessary party nor a proper party. As noticed above, the appellant is neither a purchaser nor the lessee of the suit property and has no right, title or interest therein. The first respondent-plaintiff in the suit has not sought any relief against the appellant. The presence of the appellant is not necessary for passing an effective decree in the suit for specific performance. Nor is its presence necessary for complete and effective adjudication of the matters in issue in the suit for specific performance filed by the first respondent-plaintiff against AAI. A person who expects to get a lease from the defendant in a suit for specific performance in the event of the suit being dismissed, cannot be said to be a person having some semblance of title in the property in dispute”.

8. Further, the Hon’ble Supreme Court in the case of ***Kasturi v. Iyyamperumal***, reported in **(2005) 6 SCC 733**, held that ‘necessary parties’ are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings. On the other hand ‘proper parties’ are those whose presence before the Court would be necessary



in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

9. Further, 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. Here a number of persons have purchased the property and it is an admitted fact.

10. Further, 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***, while dealing with the applicability of doctrine of *lis pendens*, 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 where the *transferee pendente lite* is made a party to the litigation, he is entitled to be heard in the matter on the merits of the case. It will be relevant to quote paragraph nos. 16, 17 & 18 of the said judgment :

“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.

17. In the instant case, the applications for substitution were filed by the respective appellants in the second appeals which are still pending on the file of the High Court though it was filed in the year 1993. The appellants have properly, sufficiently and satisfactorily explained the delay in approaching the Court. We see bona fides in their explanation in not coming to the Court at the earliest point of time. Therefore, the appellants who are transferees



pendente lite should be made as parties to the pending second appeals as prayed for by them. In our opinion, the High Court has committed serious error in not ordering the applications for substitution filed by the appellants. In our view, the presence of the appellants is absolutely necessary in order to decide the appeals on merits. Since the High Court has committed error by rejecting the appellants' applications for substitution treating the same as additional parties and thereby rendering the appellants non-suited, we have no hesitation in setting aside the said orders and permit the appellants to come on record by way of substitution as prayed for. The High Court proceeded on a wrong premise that the appellants had made the application for addition of party whereas the application under consideration was for substitution as the owner had sold the suit property to the appellants and had no interest in the pending litigation.

18. *In our opinion, the presence of the appellants was absolutely necessary since the appellants are the only persons who have got subsisting right, title and interest in the suit. The appellants are at liberty to contest the matter on merits”.*

11. Considering the aforesaid facts and circumstances of the case and the submission made on behalf of the plaintiffs/respondents that they have got no objection to the impleadment of the petitioners as defendants and further considering the law laid down by the Hon’ble Supreme Court, I



am of the considered opinion that the learned trial court committed error of jurisdiction when it dismissed the petitions of the petitioners.

12. Hence, the order dated 13.04.2017 passed by the learned Sub Judge-IV, Rohtas in Title Suit No. 68 of 2001 is set aside. Consequently, both the petitions dated 16.11.2016 filed by the interveners/petitioners under Order 1 Rule 10 of the Code are allowed.

13. As a result, the instant petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.10.2024
Transmission Date	NA

