

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.14 of 2023

Badri Prasad Son of Late Hari Prasad Sah, Resident of Mohalla- Magadh Colony, Chandaoti More, P.S.- Chaundauti, District-Gaya.

... .. Petitioner

Versus

1. Badan Kumar Singh Son of Late Harikishun Singh, Resident of Village - Damanpura, P.S.- Raghunathpur, District- Siwan.
2. Satrugan Narayan Singh Son of Late Ramdutta Singh Resident of Village- Damanpura, P.S.- Raghunathpur, District- Siwan.
3. Vijay Kumar Singh Son of Late Ramdutta Singh Resident of Village- Damanpura, P.S.- Raghunathpur, District- Siwan.
4. Beer Bahadur Singh Son of Late Ramdutta Singh Resident of Village- Damanpura, P.S.- Raghunathpur, District- Siwan.
5. Bishram Singh Son of Late Ram Bharat Singh, Resident of Mohalla- Magadh Colony, Chandaoti More, P.S.- Chandaoti, District- Gaya

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Advocate

For the Respondent/s : Mr. Jitendra Prasad Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 31-07-2024

The present Misc. Petition has been filed under Article 227 of the Constitution of India by the petitioner against the order dated 12.09.2022 passed by the learned Sub Judge-I, Gaya in Title Suit No. 134 of 2013 whereby and whereunder the learned Sub Judge-I, Gaya allowed the petition dated 22.09.2018 filed by the intervenor/respondent no. 5 under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code').

02. Briefly stated, the facts of the case are that



respondent-1st set is plaintiff of Title Suit No. 134 of 2013 and petitioner and respondent-2nd set are defendants whereas respondent-3rd set, i.e., respondent no. 5, Bishram Singh, is the intervenor. Plaintiff-Badan Kumar Singh is one of the sons of Harikishun Singh, who was having three other sons, Ramnaresh Singh, Fulena Singh, and Ramdutta Singh. Respondent-2nd set are the sons Ramdutta Singh. Ramnaresh Singh died unmarried in the year 1997. The plaintiff being the brother and Class-II heir of Ramnaresh Singh became only legal heir and successor of late Ramnaresh Singh as the two other brothers, Fulena Singh and Ramdutta Singh predeceased him in 1985 and 1987, respectively. The suit plot is 03 *Kattha* (19.5 decimal) of land was purchased by Ramnaresh Singh through registered sale-deed dated 28.09.1972 having the following description: C.S. Plot No. 477, C.S. Khata No. 102 corresponding to R.S. Plot No. 699, R.S. Khata No. 19 situated at PS-Chandauti, District-Gaya, details of which have been mentioned in Schedule-1 of plaint. It further transpires that defendant nos. 2 to 4 claim execution of two gift deeds, dated 22.09.1978 and 12.10.1993 in their favour by Ramnaresh Singh with regard to joint family property. However, it is claimed that Schedule-1 land was never part of the gift deeds and R.S. *khatiyan* entry is recorded in the



name of Ramnaresh Singh and plaintiff. In December, 2012, after recovering from his illness, when the plaintiff approached the *Halka Karmachari* for payment of land revenue with respect of Schedule-1 land, then he was informed that with respect to 06 decimal of land, separate demand has been instituted in the name of Badri Prasad, defendant no. 1, the petitioner of the present case. Thereafter, the plaintiff filed Misc. Case No. 10 of 2013 for correction of *jamabandi* in which defendant no.1/petitioner appeared and disclosed that he had purchased the land in question through registered sale-deed dated 09.01.2012 from defendant nos. 2 to 4 and on the basis of said deed, his name has been mutated in the revenue record in Mutation Case No. 6077 of 2011-12 vide order dated 16.01.2013. Thus, the plaintiff came to know about gift deed dated 12.10.1993 and sale deed dated 09.01.2012. Thereafter, claiming that defendant nos. 2 to 4 had no right to execute the sale deed dated 09.01.2012, the instant title suit has been filed by the plaintiff for cancellation of gift deed dated 12.10.1993 and sale deed dated 09.01.2012, respectively. After appearance, the defendant no. 1 filed his written statement claiming that Ramnaresh Singh executed the gift deed dated 12.10.1993 in favour of sons of Ramdutta Singh which was accepted by donees and since then



donees came in possession of the disputed land. It has also been stated that gift deed dated 22.10.1978 has never been challenged by plaintiff in Partition Suit No. 37 of 1979 and it was wrong on part of the plaintiff to say that gift deed dated 22.09.1978 is ineffective and illegal document. However, during pendency of the suit, plaintiff executed a registered sale deed on 25.09.2017 in favour of the intervenor/respondent, Bishram Singh, who filed an application dated 22.09.2018 under Order 1 Rule 10(2) of the Code with a prayer to add him as a co-plaintiff in the suit. The defendant no. 1 filed rejoinder on 06.12.2018 to the petition dated 22.09.2018. The intervenor's petition was allowed by the learned trial court at the cost of Rs. 500/- to be paid to the defendant and the said order has been challenged before this Court in the instant petition.

03. Learned counsel submitted that the impugned order of the learned trial court is not sustainable and has been passed without consideration of the facts on record. Apparently, the sale deed in favour of the intervenor/respondent no. 1 has been executed during the pendency of the title suit, that too, without the leave of the court. The learned trial court has not considered the legal principle that a transferee *pendente lite* cannot seek his impleadment without leave of the court. The



learned trial court also overlooked the fact that during pendency of the title suit, the plaintiff filed an injunction petition dated 22.05.2013 under Order 39 Rule 1 and 2 read with Section 151 of the Code praying therein to restrain the defendant no. 1 and others from dealing with the property and interfering in peaceful possession of the plaintiff. The said petition was contested by the defendant no. 1 and while injunction petition was being heard by the learned trial court, the plaintiff himself executed registered sale-deed in favour of the intervenor by keeping the court as well as defendant no. 1 in dark, which shows the malafide intention of the plaintiff. On one hand, the plaintiff has been seeking injunction against defendant no. 1 from the court and on the other hand, he himself transferred the suit property in favour of the intervenor and has set up the purchaser to become a party by filing intervention application. It was a malafide act on part of the plaintiff, who deliberately executed the sale deed on 25.09.2017 without seeking permission from the court. Learned counsel further submitted that learned trial court has not taken into consideration this fact that if the vendor of the intervenor was already on record to protect the interest of the intervenor, the intervenor is not a necessary party in these circumstances. Learned counsel further submitted that the act of



the plaintiff amount to overreaching the court and when the matter is *sub-judice* and the injunction petition filed by the plaintiff was pending and the matter was partly heard, no right is created in favour of the intervenor. In support of his submission, learned counsel placed reliance on the decision of Hon'ble Supreme Court in the case of ***Bibi Zubaida Khatoon v. Nabi Hassan Saheb***, reported in ***(2004) 1 SCC 191*** wherein it has been held that a transferee *pendente lite* without leave of the court cannot, as of right, seek impleadment as a party in the suits. Learned counsel further submitted that there is no absolute rule that transferee *pendente lite* in all cases be allowed to join and contest the pending suit. Such transferee has got no right to seek impleadment and learned counsel also relied on the decision of Hon'ble Supreme Court in the case of ***Sarvinder Singh v. Dalip Singh***, reported in ***(1996) 5 SCC 539***. Learned counsel further submitted that a person who has acquired the property during the pendency of the suit without permission of the court, the sale deed was *void ab initio* and thus, no right accrues to him to be added as co-plaintiff in the suit. On the aforesaid ground, learned counsel submitted that the impugned order is not correct and the same be set aside.

04. On the other hand, learned counsel appearing on



behalf of intervenor/respondent vehemently contended that there is no illegality or infirmity in the impugned order and the same need no interference. Learned counsel submitted that the petitioner is purchaser of 6.41 decimal of land which is the subject matter of the suit and after execution of the sale deed, the petitioner has come in possession of the purchased land. His name has also entered into revenue record. In this manner, the intervenor/respondent has stepped into the shoes of the plaintiff and has acquired right, title and interest in the suit property and is, therefore, proper and necessary party to the suit. The plaintiff, after sell of the said property, has lost interest in the suit and, therefore, the suit is being lingered on. Learned counsel further submitted that presence of the petitioner as co-plaintiff is necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the suit. In support of his contention, learned counsel relied on the decision of 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*** wherein the Hon'ble Supreme Court held that the court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. With regard to rights of



transferee *pendente lite*, learned counsel relied on the decision of Hon'ble Supreme Court in the case of ***Amit Kumar Shaw v. Farida Khatoon***, reported in ***AIR 2005 SC 2209*** wherein the Hon'ble Supreme Court has held that though the transferee is not entitled as of right to be made a party to the suit, yet 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. The Hon'ble Supreme Court has further held that a transferee *pendente lite* to the extent he has acquired interest from the defendant is vitally interested in the litigation. 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. Thus, the learned counsel submitted that there is no infirmity in the impugned order and the same needs to be sustained.

05. I have given my thoughtful consideration to the rival submission of the parties as well as on facts and the law. 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.”

06. The Hon’ble Supreme Court in the case of ***Suntibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)***, reported in ***(2007) 10 SCC 82***, has held that a person having a fair semblance of title or interest in the suit property can certainly file an application for impleadment. It further held that to take a contrary view would lead to multiplicity of litigation.

07. It is true that a transferee *pendente lite* cannot claim impleadment as a matter of right. However, if his interest is substantial, he can be impleaded in pending suit as held by the Hon’ble Apex Court in the case of ***Amit Kumar Shaw*** (supra).

08. In the present case, much stress has been put by the learned counsel for the petitioner, defendant no.1, that it was



the malafide on part of the plaintiff to create their third party interest in favour of the intervenor-respondent. This submission appears to have ring of truth in it since the injunction petition filed by the plaintiff has been pending and during pendency, the plaintiff transferred the land in favour of the intervenor-respondent. Moreover, this transfer took place without leave of the court and would be hit by the principle of *lis pendens* and would be barred under Section 52 of the Transfer of Property Act if the transfer is without notice. The defendants are always at liberty to raise this issue before the learned trial court and necessary consequences would follow. In such situation, the transferee may not be a necessary party but such transferee will be a proper party whose presence may be necessary before the court in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. Moreover, it is the discretion of the court since Order 1 Rule 10(2) of the Code carves out an exception to general rule with regard to impleadment of parties. The position has been made clear by the Hon'ble Supreme Court in the case of ***Mumbai International Airport (P) Ltd.*** (supra) wherein in Paragraph-22, the Hon'ble Supreme Court has held as under:-

“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.”

09. In the light of aforesaid discussion, it is clear that ultimately it is the judicial discretion of the court which matters. Since the intervenor is a purchaser by transfer *pendente lite*, it cannot be said that he has no semblance of title or interest in the subject matter. Therefore, I do not think the learned trial court committed any error if it allowed intervenor's petition and impleaded the intervenor as co-plaintiff. However, considering the facts and circumstances prevailing at the time of execution of sale-deed in favour of the intervenor-respondent, a restriction must be imposed upon the intervenor that he would only step



into the shoes of original plaintiff and would not claim any other rights except what is available to the original plaintiff and would be bound by the previous acts of the plaintiff.

10. With the aforesaid observation, the impugned order dated 12.09.2022 passed by the learned Sub Judge-I, Gaya in Title Suit No. 134 of 2013 is hereby affirmed.

11. Accordingly, the present Civil Misc. Petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-
Balmukund/-

AFR/NAFR	AFR
CAV DATE	08.07.2024
Uploading Date	31.07.2024
Transmission Date	NA

