

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.665 of 2019

1. Ramawati Kuwar, Wife of Late Surendra Ojha, Resident of Village- Nagai, Police Station- Siswan, District- Siwan.
2. Rama Shankar Ojha, Son of Late Surendra Ojha, Resident of Village- Nagai, Police Station- Siswan, District- Siwan.
3. Guddu Ojha @ Narendra Ojha, Son of Late Surendra Ojha, Resident of Village- Nagai, Police Station- Siswan, District- Siwan.
4. Santu Ojha @ Bijay Shanker Dubey, Son of Nand Kishroe Dubey, Resident of Village- Nagai, Police Station- Siswan, District- Siwan.
5. Mostt. Ahilya Devi @ Ahilya Kuwar, Wife of Late Wakil Ojha, Resident of Village- Nagai, Police Station- Siswan, District- Siwan.
6. Aman Ojha @ Abhishek Ojha, minor under the guardianship of his mother Ahilya Devi Resident of Village- Nagai, Police Station- Siswan, District- Siwan.
7. Muni Kumari, Daughter of Late Wakil Ojha, Minor under the guardianship of her mother Ahilya Devi, Resident of Village- Nagai, Police Station- Siswan, District- Siwan.
8. Chhoti Kumari @ Amrita Kumari, Minor under the guardianship of her mother Ahilya Devi, Resident of Village- Nagai, Police Station- Siswan, District- Siwan.

... .. Petitioner/s

Versus

1. Sanjay Kumar Gupta, Son of Late Shojee Prasad Gupta, Resident of Village- Ramgarh, P.O.- Ramgarh, P.S.- Siswan, District- Siwan.
2. Rajeev Kumar Gupta, Son of Late Shojee Prasad Gupta, Resident of Village- Ramgarh, P.O.- Ramgarh, P.S.- Siswan, District- Siwan.
3. Sanjeev Kumar Gupta, Son of Late Shojee Prasad Gupta, Resident of Village- Ramgarh, P.O.- Ramgarh, P.S.- Siswan, District- Siwan.
4. Jayanti Devi, Daughter of Late Shojee Prasad Gupta, Resident of Village- Ramgarh, P.O.- Ramgarh, P.S.- Siswan, District- Siwan.
5. Ranjita Devi, Daughter of Late Shojee Prasad Gupta, Resident of Village- Ramgarh, P.O.- Ramgarh, P.S.- Siswan, District- Siwan.
6. Rangnath Tiwary, Son of Mukhlal Tiwari, Resident of Village- Ramgarh, P.O. Ramgarh, Police Station- Siswan, District- Siwan.
7. Bijay Kumar Sah, Son of Late Ganga Bishun Sah, Resident of Village- Ramgarh, P.O. Ramgarh, Police Station- Siswan, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Raghav Prasad, Advocate
For Respondent no.6 : Mr. Vijay Kumar Mishra, Advocate



For the Respondent no.7: Mr. Rajendra Narain, Sr. Adv.
Ms. Anju Kumari @ Anju Narain, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 03-04-2025

The petitioners have filed the instant civil miscellaneous petition for quashing the order dated 05.03.2019 passed by learned Munsif-II, Siwan in Misc. Case No. 08 of 2017 whereby and whereunder the petition dated 04.12.2018 filed by respondent nos. 6 and 7 under Order 1 Rule 10 of the Code of Civil Procedure (hereinafter 'the Code') has been allowed.

2. Facts of the case, shorn of unnecessary details, are that the original defendant no.1 Ramchandra Sah executed a *mahadnama* on 27.10.1992 in favour of Devendra Ojha, the ancestor of the present petitioners, in respect of land of *Khata* No. 268, *Kheshra* No. 1011 for consideration amount of Rs. 30,000/- and he received Rs. 20,000/- at the time of execution of said *mahadnama* with stipulation that the balance amount of Rs. 10,000/- would be paid at the time of registration of the land within one year. However, despite request by Devendra Ojha, Ramchandra Sah declined to execute the sale deed and thereafter Devendra Ojha filed a suit bearing Title Suit No. 331 of 1994 in the court of learned Munsif-II, Siwan for specific



performance. The defendant Ramchandra Sah appeared and contested the suit but ultimately a compromise took place on 15.04.1996 and the suit was decreed in terms of the compromise on 18.01.2000 and decree was sealed and signed on 03.02.2000. The decree attained finality as it was not challenged. It further transpires that defendant Ramchandra Sah did not obey the decree and refused to execute the sale deed in favour of Devendra Ojha and hence, Devendra Ojha filed Execution Case No. 1 of 2002 in the court of learned Munsif-II, Siwan against Ramchandra Sah. It further transpires that Ramchandra Sah filed Title Suit No. 48 of 2002 for setting aside the compromise decree of Title Suit No. 331 of 1994 and for staying the Execution Case No. 1 of 2002. Devendra Ojha entered appearance in the said suit, filed his written statement on 05.03.2003 and also filed a separate petition under Order 23 Rule 3A of the Code on 03.07.2003 praying to dismiss the Title Suit No. 48 of 2002 as it was not maintainable. Further, Misc. Case No. 28 of 2004 under Order 23 Rule 3 of the Code was filed for cancellation of compromise decree of Title Suit No. 331 of 1994. The said Misc. Case No. 28 of 2004 was dismissed due to non-prosecution vide order dated 02.02.2017 by the learned Munsif-II, Siwan. Thereafter, Misc. Case No. 8 of 2017



was filed by respondent 1st set under Section 151 of the Code for restoration of Misc. Case No. 28 of 2004 which is pending for disposal. During pendency of this miscellaneous case, respondents 2nd set filed a petition under Order 1 Rule 10 of the Code for their addition as party on 04.12.2018. The petitioners filed rejoinder to the said petition on 11.02.2019 submitting that the intervenors were not necessary party to the proceeding. The learned trial court, after hearing the parties, allowed the petition filed by the respondents 2nd set vide order dated 05.03.2019. This order is under challenge before this Court.

3. Learned counsel appearing on behalf of the petitioners submitted that the impugned order is illegal and the learned trial court has committed error of jurisdiction in allowing the petition for addition of parties. Learned counsel submitted that in a proceeding for restoration of restoration case, the outsiders to the proceeding cannot be allowed to contest the same, that too, when five applicants are already on record. The learned trial court failed to consider that the intervenors are purchasers during pendency and they have purchased the litigation and cannot insist upon being made parties as the heirs of Ramchandra Sah are already on record and for this reason the intervenors/respondents 2nd set are not necessary parties. The



learned trial court has also not considered the fact that the original defendant Ramchandra Sah had entered into the agreement with the ancestor of the petitioners and after decree in the suit for specific performance, based on compromise, handed over the possession to the petitioners. For this reason there was no occasion for transfer of the suit property in favour of the intervenors by the heirs/legal representatives of Ramchandra Sah. Learned counsel further submitted that the learned trial court did not even consider that no date for the sale deed executed in favour of the intervenors have been given and no details of the land transferred in their favour was provided and this shows the application for impleadment has been filed by the respondents 2nd set with ulterior motive playing hide and seek. Further, in a miscellaneous case filed for restoration of a miscellaneous case, there was no occasion for the intervenors to get themselves impleaded when the applicants of the miscellaneous case are already on record and contesting the same. Thus, the learned counsel submitted that the impugned order could not be sustained and the same be set aside.

4. Learned senior counsel appearing on behalf of respondent no.7 vehemently contended that there is no infirmity in the impugned order and the same does not need any



interference by this Court. Learned senior counsel submitted that the ancestor of the petitioners obtained a fraudulent decree and the original defendant Ramchandra Sah filed Misc. Case No. 28 of 2004 for setting aside the said fraudulent decree and execution proceeding based on it. During pendency of Misc. Case No. 28 of 2004, Ramchandra Sah died leaving behind his wife Panmati Kuwar who was substituted in his place. In the year 2010 the answering respondent purchased some land from Most. Panmati Kuwar vide registered sale deed dated 01.11.2010. Similarly, one Laxmi Devi, wife of Sanwaliya Sah, had earlier purchased a piece of land from Ramchandra Sah and sold that land to one Sumitra Devi, wife of the answering respondent. Earlier in the year 1996, Ramchandra Sah sold 3 *bigha 6 katha* land to one Rangnath Tiwari. All the vendees have been continuing in their possession. Panmati Kuwar had grown old and has not been keeping good health, the *pairvi* in Misc. Case No. 28 of 2004 was being done by respondent Bijay Kumar Sah. However, this respondent became busy in connection with marriage ceremony of his niece and as a result no proper steps could be taken in the case and vide order dated 02.02.2017, Misc. Case No. 28 of 2004 was dismissed in default. For its restoration, Panmati Kuwar filed a petition under



Section 151 of the Code on 18.02.2017 which was numbered as Misc. Case No. 8 of 2017. Learned senior counsel further submitted that the interest of respondents Bijay Kumar Sah and Rangnath Tiwari in the suit property is crystal clear as they came into possession of the suit property after purchase either from the original defendant or from his heirs/legal representatives. Panmati Kuwar died on 01.12.2018 and after her death, some of her maternal grandchildren as legal heirs have been made applicants in the miscellaneous case but they were only for the sake of name as they have no direct interest in the proceeding as nothing was left of the property, it is the purchasers who are directly involved in the matter. Learned senior counsel further submitted that these facts go on to show that the respondents 2nd set have direct interest in the matter and further development has also taken place in Misc. Case No. 8 of 2017 wherein the affidavits of the respondents 2nd set have been filed in evidence and respondents 2nd set have also filed a petition for intervention as purchasers in Execution Case No. 1 of 2002. Moreover, after purchase of the land of Ramchandra Sah by the respondents 2nd set, heirs/legal representatives, i.e., maternal grandchildren of Ramchandra Sah had no interest in pursuing the matter and as the purchasers are the real and actual



owners, they have become the masters of the proceedings and their presence is essentially required. Therefore, the impugned order has been rightly passed by the learned trial court. Learned senior counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Amit Kumar Shaw & Anr. vs. Farida Khatoon & Anr.***, reported in ***AIR 2005 SC 2209*** wherein the Hon'ble Supreme Court held that even transferee *pendente lite* can be added as a proper party if his interest in the subject matter of suit is substantial and not just peripheral. Learned senior counsel further submitted that an alienee would ordinarily be joined as a party to enable him to protect his interest as the Hon'ble Supreme Court in the case of ***Amit Kumar Shaw*** (supra) 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 the *transferee pendente lite* is made a party to the litigation, is entitled to be heard in the matter on the merits of the case. Further, the learned senior counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Savitri Devi vs. District Judge, Gorakhpur & Ors.***, reported in ***AIR 1999 SC 976*** wherein the Hon'ble Supreme Court allowed impleadment of the purchasers of the



property despite interim injunction granted by the court restraining the respondents from alienating the property. The Hon'ble Supreme Court further held that the impleadment of the purchasers are necessary for deciding questions whether sales were committed in contempt and disregard of injunction and whether purchasers were *bona fide* transferees and in order to avoid the multiplicity of suits.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record. From the contention of the parties, it is apparent that the respondents 2nd set are purchasers from heirs of Ramchandra Sah who was the original defendant and decree for specific performance was passed against him. It is also apparent that the respondents 2nd set are *lis pendens* purchasers. In normal circumstances if the vendors of the purchasers are on record to protect their interest, there would have arisen no need to induct the respondents 2nd set as parties. But in the present facts and circumstances, it is clear that the original defendant as well as his wife, who sold the suit land to the respondents 2nd set, are no more, the miscellaneous case filed for restoration of another miscellaneous case is being prosecuted by the maternal grandchildren of Ramchandra Sah and Panmati Kuwar and grave apprehension has been shown by



respondents 2nd set that they might not be interested in pursuing the proceeding of Misc. Case No. 8 of 2017. So it is in order that the respondents 2nd set who are purchasers, be allowed to get themselves impleaded in miscellaneous proceeding so as to protect their interest.

6. Moreover, Order 1 Rule 10(2) of the Code provides for impleadment of parties at any stage of the proceedings if presence of such person would enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit. Another facet is that this would also help in stopping the multiplicity of litigation. The *lis pendens* purchasers can be impleaded as parties as held by the Hon'ble Supreme Court in the case of ***Amit Kumar Shaw*** (supra), paragraph no. 16 of which held as under:-

“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, whether 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 XXII 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 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.”

Similarly, paragraph no. 8 of the decision of the Hon’ble Supreme Court in the case of **Savitri Devi** (supra) held as under:-

“8. The facts set out by us in the earlier paragraphs are sufficient to show that there is a dispute as to whether the first defendant in the suit was a party to the order of injunction made by the Court on 18-8-1992. The proceedings for punishing him for contempt are admittedly pending. The plea raised by him that the first respondent had played a fraud not only against him but also on the Court would have to be decided before it can be said that the sales effected by the first defendant were in violation of the order of the Court. The plea raised by



respondents 3 to 5 that they were bona fide transferees for value in good faith may have to be decided before it can be held that the sales in their favour created no interest in the property. The aforesaid questions have to be decided by the Court either in the suit or in the application filed by respondents 3 to 5 for impleadment in the suit. If the application for impleadment is thrown out without a decision on the aforesaid questions, respondents 3 to 5 will certainly come up with a separate suit to enforce their alleged rights which means a multiplicity of proceedings. In such circumstances, it cannot be said that respondents 3 to 5 are neither necessary nor proper parties to the suit"

7. Therefore, in the light of aforesaid decisions and proposition of law enunciated therein, I am of the considered opinion that the learned trial court did not commit any error of jurisdiction and has passed a valid order which is affirmed.

8. Accordingly, finding no merit in the present petition, the same is dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
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