

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1346 of 2016

Md. Ismail @ Md. Ismail Azad son of Md. Ibrahim Resident of Village- Paik Tola, Police Station and District- Araria.

... .. Petitioner/s

Versus

1. Md. Mozim
2. Md. Azim
both sons of Late Sk. Saffo
3. Most Somera, wife of Late Nazim
4. Md. Abu Bakr
5. Md. Abu Bashar
both sons of Md. Mozim
6. Rahat Parween daughter of Late Nazim Opposite party nos. 4 to 6 are minors and are represented through their mother Most. Somera Opposite Party No.3
7. Bibi Zohra daughter of Late Sk. Saffo
8. Bibi Kulsum daughter of Late Sk. Saffo All resident of Village- Paik Tola, Police Station and District- Araria.
9. Bibi Nusara daughter of Late Sk. Saffo, wife of Bechan Resident of Village- Turkaili, P.O.- Garki, Police Station- Jokihat, District- Araria.
10. Md. Aiyub
11. Md. Nooruddin
12. Md. Abbas
13. Md. Nayeem all sons of Late Ghulam Moin all resident of Village and P.o. Paik Tola, Police Station and District- Araria.
14. Shiv Nandan Pd.
15. Gokula Nand Rai
16. Suryanand Rai all sons of Late Deo Nandan Rai
17. Indira Nand Rai son of Late Kamalanand Rai
18. Sachita Nand Rai son of Late Kamala Nand Rai All resident of Village- Paik Tola, Police Station and District- Araria.
19. Md. Ibrahim son of Late Tasowar Resident of Village- Paik Tola, Police Station and District- Araria.
20. Md. Taha son of Most Hadisan, wife of Late Mohammad
21. Hafiz Taiyab son of Most. Hadisan, wife of Late Mohammad all resident of Village- Chilhania, P.O. Bagnagar, P.S.- Mahalgaon, District- Araria.
22. Md. Israil son of Late Khantar
23. Md. Afaque Alam
24. Md. Naushad Alam



25. Md. Irshad Alam all sons of Late Budhan Mian
26. Md. Ishaque son of Late Sk. Aziz resident of Village and P.o. Paik Tola,
Police Station and District- Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Raghiv Ahsan, Sr. Advocate
Mr. Wasi Akhtar, Advocate
Mr. Ashar Akhtar, Advocate
For the Respondent/s : Mr. Sanjay Kumar Sharma, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 27-08-2024

Heard learned senior counsel for the petitioner and the learned counsel for the respondent nos. 1 to 9.

02. The petitioner has filed the instant petition under Article 227 of the Constitution of India to set aside the order dated 08.09.2016 in Title Suit No. 64 of 2011 passed by learned Sub Judge-06, Araria whereby and whereunder the application filed by the petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure (hereinafter “the Code”) has been rejected.

03. Learned senior counsel for the petitioner submits that the plaintiffs/respondents Ist set has filed the Title Suit No. 64 of 2011 for the following reliefs:

“a) Let it be decreed and decreed and declared that Schedule A of the suit land is the ancestral property of the plaintiffs.

(b) Let it be decreed and declared that the ancestors of the plaintiffs and thereafter the plaintiffs are in possession over the suit



land having valid right, title and interest thereon.

(c) Let it be decreed and declared that the schedule "B" of the suit land is the part and parcel of schedule "A" of the suit land and Schedule "B" of the suit land has been carved out, out of the schedule "A" of the suit land.

(d) Let it be adjudicated that Schedule "B" of the suit land being the part and parcel of Schedule "A" of the suit land legally belong to the plaintiffs who are the real owners of the suit land.

(e) Let it be further decreed and declared that entry during R.S.Operation in the name of the ancestors of the defendant nos.1 to 4 and defendants nos. 5 to 9 and defendant nos. 10 to 12 are not inconsonance with the recorded C.S. tenants of schedule "A" land and they were in no way concerned to the C.S. recorded tenants nor they were related to the C.S. recorded tenants. Hence the entry in their names is not binding on the plaintiffs and accordingly defendant concerned have got no manner of concern with the suit land.

(f) Let it be decreed and declared on adjudication of the above reliefs that schedule "B" of the suit land which is part and parcel of the schedule "A" of the suit land exclusively and legally belong to the plaintiffs and not belong to defendants no.1



to 12.

(g) If during the pendency of the suit the plaintiffs are found dispossessed from the suit land by the defendant nos. 1 to 12, in that case the plaintiffs be put in possession over the suit land after recovery of possession.

(h) Let the defendants no.1 to 12 be restrained by way of permanent injunction not to dispossess the plaintiffs from the suit land and not to dispose off the suit land during the pendency of the suit.”

04. Learned senior counsel for the petitioner further submits that the petitioner is the purchaser of 2.16 acre of suit property from defendant nos. 8 and 9 during pendency of the suit. Even the claim of the defendant nos. 8 & 9 are only to the extent of 2.16 acre of land and whole of their interest has been purchased by the petitioner. Learned senior counsel further submits that despite this fact, the learned trial court rejected the petition filed by the petitioner for impleadment on the ground that the suit property has been purchased during pendency of the suit and defendant nos. 8 & 9 have been contesting the suit and the intervenor has failed to bring any material on the record to show that suit is in collusion. The learned trial court further held that the interest of the petitioner is well protected through the



vendors who are defendants in the case.

05. Learned senior counsel for the petitioner further submits that the impugned order is not sustainable as the same is against the settled principles of law. The learned senior counsel referred to paragraph nos. 16, 17 and 18 of the decision of the Hon'ble Supreme Court in the case of *Amit Kumar Shaw & Anr. Vs. Farida Khatoon and Anr.*, reported in *AIR 2005 SC 2209* wherein the Hon'ble Supreme Court 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 is entitled to be impleaded in the suit or other proceedings. Learned senior counsel further referred to a decision of learned Single Judge of this Court in the case of *Gauri Shankar Pathak and Ors. Vs. Dr. Shankaranand Upadhyay and Ors.*, reported in *2011(2) BBCJ V- 50* which relied on the aforesaid decision of the Hon'ble Supreme Court. Learned senior counsel further referred to the decision of Hon'ble Supreme Court in the case of *Mumbai International Airport (P) Ltd. Vs. Regency Convention Centre and Hotels (P) Ltd. and Ors.*, reported in *(2010) 7 SCC 417* wherein the Hon'ble Supreme Court discussed the law relating to impleadment of parties under Order 1 Rule 10(2) of the Code.



Learned senior counsel further referred to the decision of the Hon'ble Supreme Court in the cases of *Sumtibai Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)*, reported in *(2007) 10 SCC 82* and *Kasturi Vs. Iyyamperumal*, reported in *(2005) 6 SCC 733* to stress the point that a person having semblance of interest in the suit property could be made a party. Thus, the learned senior counsel submits that the impugned order suffers from jurisdictional error and the same needs to be set aside.

06. Learned counsel for the respondents has no objection to the prayer made on behalf of the petitioner.

07. I have given my thoughtful consideration to the submission made on behalf of the petitioner and to the facts and circumstances of the case. 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.”

08. The Hon’ble Supreme Court in the case of ***Mumbai International Airport (P) Ltd.*** (supra) 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”.

09. Further, the Hon’ble Supreme Court in the case of ***Kasturi*** (supra), 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 although no relief in the suit was claimed against such person.

10. Further, the Hon'ble Supreme Court in the case of *Suntibai* (supra) has held that a party having a semblance of interest in the suit property could be impleaded as a party in the suit.

11. Further, the Hon'ble Supreme Court in the case of *Amit Kumar Shaw* (supra), 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”.*

12. Considering the aforesaid facts and circumstances of the case and 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 petition of



the petitioner. Hence, the order dated 08.09.2016 passed by the learned Sub Judge-VI, Araria in Title Suit No. 64 of 2011 is set aside. Consequently, the petition dated 20.03.2015 filed by the petitioner under Order 1 Rule 10 (2) of the Code is allowed.

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

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.09.2024
Transmission Date	N/A

