

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.90 of 2017

Dalgira Devi W/o Nanhey Chaudhary, R/o Vill.-Dehri, P.O. and P.S.-Dehri,
Distt.-Rohtas, at Present R/o Bhabhua Town, Ward No. 5, P.O. and P.S.-
Bhabhua, Distt.-Kaimur at Bhabhua

... .. Petitioner/s

Versus

1. Ramkrit Mallah S/o Late Chaturi Mallah
2. Inder Mallah
3. Bhikhari Mallah Both S/o Ramkrit Mallah
4. Dayashankar Mallah, S/o Inder Mallah
5. Rajesh, S/o Inder Mallah
All R/o Bhabhua Town, Ward No.5, P.O. and P.S.-Bhabhua, Distt.-
Kaimur at Bhabhua
6. Gangeshwari Kuer, W/o Late Rambilash Mallah
7. Jawahar Mallah
8. Moti Mallah Both S/o Rambilash Mallah null
9. Sintu, S/o Jawahar Mallah
All R/o Bhabhua Town, Ward No.5, P.O. and P.S.-Bhabhua, Distt.-
Kaimur at Bhabhua
10. Shashi Shekhar Debey
11. Prabha Shankar Dubey
12. Prabha Shankar Dubey
Both S/o Late Chandra Deo Dubey, R/o Vill-Sapnotiya, P.S.-Sonhan,
Distt.-Kaimur Bhabhua, at Present R/o Bhabhua Town, Ward No. 5, P.O. and
P.S.-Bhabhua, Distt.-Kaimur at Bhabhua

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Parth Gaurav, Advocate
For the Respondent/s : Mr. Rajani Kant Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 01-04-2024

Heard learned counsel for the petitioner and learned
counsel for the respondents and I intend to dispose of the
present civil miscellaneous petition at the stage of admission
itself.



2. The instant petition has been filed under Article 227 of the Constitution of India against the order dated 21.12.2016 passed by the learned Sub-Judge II, Kaimur at Bhabhua in T.S. No. 274/1999 (F.D.), Registration No.3340/2014 whereby and where under the learned Sub-Judge has partially allowed the prayer of the Intervenor/Respondent 2nd set without impleading them as party to the suit.

3. Learned counsel for the petitioner submits that Title Suit No. 274/1999 has been filed by the plaintiff/petitioner in the Court of Subordinate Judge, Bhabhua for partition of 1/9 share in the properties mentioned in Schedule-A of the plaint. The defendants appeared and filed three sets of written statement and contested the case. By judgment and decree dated 17.10.2016, the learned Sub Judge-II passed the decree for partition of 1/9 share in favour of the plaintiff. Thereafter, the plaintiff applied for preparation of final decree before the Subordinate Judge II, Bhabhua on 22.11.2016 and accordingly, a Survey Knowing Pleader Commissioner was appointed. While the proceeding of final decree had been taking place, the intervenors/respondent 2nd set filed an application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure (in short 'the Code') contending, *inter alia* that in the suit,



written statement was filed on behalf of the defendant Nos. 2 and 4 in which in paragraph Nos. 15, 16 and 17 they stated about executing a sale deed bearing No. 6216 dated 23.06.1998 in favour of the father of the intervenors namely, Chandra Deo Dubey, with respect to Khata No. 74, Plot No. 324, area 4 decimals and handed over the possession to him over which they are residing after constructing a house. Learned counsel further submits that the intervenors have contended that by going through paragraph No. 16 of the written statement filed on behalf of the defendant Nos. 2 and 4, it would be evident that they have contended that they have executed sale deed no. 6215 in favour of the intervenors with respect to khata No. 74, Plot No. 334, area 28 decimal as well as with respect to Plot No. 372, area 16.5 decimal and have handed over the possession to them. Learned counsel further submits that it has further been contended on behalf of the intervenors that by going through paragraph No. 17 of the written statement filed by defendant no. 6 it would be evident that he executed sale deed No. 1848 dated 10.03.1997 as well as sale deed No. 8246 dated 04.08.1998, with respect to land situated in khata No. 74 Plot No. 334 area $4\frac{3}{4}$ decimals, and sold the land to the intervenors who were put in the possession long back. Learned counsel further submits



that it has further been contended on behalf of the intervenors that the plaintiff has deliberately not made them parties in the suit. They have also contended that their father Chandra Deo Dubey was the necessary party to the suit. Thus, the intervenors made a prayer to add them as party defendant and also to direct the Survey Knowing Pleader Commissioner to allot their acquired property in their favour which has been mentioned in Schedule Ka of the intervention petition. Learned counsel further submits that a rejoinder was filed on 06.12.2016 to the petition of the intervenors. After hearing the parties the learned Subordinate Judge II, Bhabhua on 21.12.2016 allowed the prayer of the intervenors to the extent that learned Trial Court directed the Survey Knowing Pleader Commissioner to allot the acquired properties of the intervenors in their favour as detailed in Schedule-Ka of the intervention petition. This order has been challenged by the plaintiff /petitioner before this Court.

4. Learned counsel further submits that the order of the learned Subordinate Judge is not sustainable since the order has been passed by it without adding the intervenors as party to the proceedings. Thus, an illegality has been committed as without impleading the intervenors as party to the proceedings, the learned Subordinate Judge ordered for allotment of the land in



their favour from the share of their vendors. Learned counsel further submits that the petitioners have no *locus standi* as of now before the learned Court below since they have not been impleaded as parties and no order can be passed either in favour or against any person who is not a party to the proceeding. Further, the order of the learned Trial Court preempted the Survey Knowing Pleader Commissioner to allot a portion of land in favour of certain persons even when the intervenors were not party to the proceeding. The learned Trial Court did not follow the provisions of Section 44 of the Transfer of Property Act whereby a vendee can get the possession only by partition in accordance with law and not otherwise. The learned Trial Court further failed to appreciate that no share can be granted to a person who is not a party to the suit. Thus, the order of the learned Trial Court is not sustainable and the same be set aside.

5. Learned counsel appearing on behalf of the intervenors/respondents 2nd set submits that the plaintiff/petitioner deliberately did not make the intervenors party though it has come on record that they are purchasers from the defendants. The plaintiff/petitioner is not even the daughter of the common ancestor through which the parties are claiming



their share. The respondent No. 1 has set up the plaintiff/petitioner to seek partition whereas the respondents and the petitioner have sold a number of plots of land. Even after coming to know about sale of the land to the intervenors/respondent 2nd set they were not made party. Various persons have purchased the property and even the property in question was sold by the plaintiff/petitioner. Learned counsel further submits that the respondents 2nd set have purchased the land before filing of the title suit and land was mutated in their favour and the plaintiff has also made averment that the land sold by the co-sharer of the petitioner would be alienated from the share of the vendor. However, with *malafide* intention, the petitioner sold the land of her other share holders. Learned counsel further submits that the petition filed by the respondents 2nd set was for making them as party and thereafter, allotting the share of their vendors in their favour since they were having their rice polishing mill on the suit land. However, the learned Trial Court inadvertently failed to mention that the respondents 2nd set/intervenors were impleaded as party though it allowed their prayer for allotting from the share of their vendors in their favour.

6. Having regard to the rival submissions and after going



through the records, it transpires that an application was filed by the intervenors under Order 1 Rule 10 read with Section 151 of the Code. In the said application, the intervenors/respondent 2nd set made prayer that they be impleaded as parties and the Survey Knowing Pleader Commissioner be directed to allot the land as mentioned in Schedule-Ka, of the suit property to the share of the intervenor/petitioners. The learned Trial Court though took up the petition filed by the intervenors for consideration, it failed to pass orders with regard to prayer about making the intervenors parties in the suit. However, the learned Trial Court has observed that the sale deed of the intervenors was prior to the institution of the suit and the land purchased by them falls within the share of their vendors. Thereafter, it passed the orders for allotment of the Schedule-Ka land in their favour carving it out from the share of their vendors. Since the learned Trial Court has failed to consider the prayer about impleadment of the intervenors/petitioners/respondents 2nd set, the part of the order allotting them share from the portion of their vendors becomes an order passed in favour of stranger and ipso facto the same could not be sustained.

7. Hence, the order dated 21.12.2016 is set aside with direction to the learned Court below to pass an order on the



prayer of the intervenors/petitioners/respondent 2nd set about their impleadment and thereafter, consider the other prayer with regard to allotment of their share. The said order must be passed within a month from the date of receipt/production of a copy of this order.

8. With the aforesaid direction, the instant petition stands allowed.

(Arun Kumar Jha, J)

Prakash/-

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| AFR/NAFR | NAFR |
| CAV DATE | Na |
| Uploading Date | |
| Transmission Date | NA |

