

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.320 of 2023**

Md. Atif Ansar, Son of Late Md. Iqbal Ansari @ Late Md. Iqbaluddin,
Resident of Village- Powerganj, Anaith, P.O. Anaith, Police Station- Nawada,
District- Bhojpur (Ara).

... .. Petitioner/s

Versus

1. Rehan Mohammad Tarique, Son of Late Md. Nehaluddin, Resident of Village- Powerganj, Anaith, P.O. Anaith, Police Station- Nawada, District- Bhojpur (Ara).
2. Mohammad Irfan, Son of Late Md. Nehaluddin, Resident of Village- Powerganj, Anaith, P.O. Anaith, Police Station- Nawada, District- Bhojpur (Ara).
3. Majida Khatoon, Wife of Late Md. Nehaluddin, Resident of Village- Powerganj, Anaith, P.O. Anaith, Police Station- Nawada, District- Bhojpur (Ara).
4. Kahkasa Khatoon, Daughter of Late Md. Nehaluddin, Resident of Village- Powerganj, Anaith, P.O. Anaith, Police Station- Nawada, District- Bhojpur (Ara).
5. Gulapana Khatoon, Daughter of Late Md. Nehaluddin, Resident of Village- Powerganj, Anaith, P.O. Anaith, Police Station- Nawada, District- Bhojpur (Ara).
6. Darokhsa Khatoon, Daughter of Late Md. Nehaluddin, Resident of Village- Powerganj, Anaith, P.O. Anaith, Police Station- Nawada, District- Bhojpur (Ara).
7. Zarafsa Khatoon, Daughter of Late Md. Nehaluddin, Resident of Village- Powerganj, Anaith, P.O. Anaith, Police Station- Nawada, District- Bhojpur (Ara).
8. Md. Helaluddin, Son of Late Md. Jalaluddin, Resident of Village- Powerganj, Anaith, P.O. Anaith, Police Station- Nawada, District- Bhojpur (Ara).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sarvadeo Singh, Advocate Mr. Naushad Akhtar, Advocate
For the Respondent/s	:	Mr. Praveen Kumar, Advocate Mr. Raju Kumar Singh, Advocate

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



Date : 27-08-2024

Heard learned counsel for the petitioner and learned counsel for the respondents 1st set on the point of admission and I intend to dispose of this petition at this stage itself.

2. The present petition has been filed under Article 227 of the Constitution of India for quashing the order dated 09.01.2023 passed by learned Sub Judge-VI, Ara in Title Suit No. 12 of 2007 whereby and whereunder the prayer made by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure (hereinafter referred to as 'the Code') for addition of further name of defendants, who have purchased the land sold by the defendants during the pendency of the title suit, has been rejected.

3. The learned counsel for the petitioner submits that the petitioner is plaintiff before the learned trial court and has filed the suit for partition against the defendants/respondents claiming share in the property of the family. During pendency of the suit, the plaintiff filed a petition for restraining the defendants from making any sale in favour of third party and the application was disposed of vide order dated 30.03.2010 by the learned trial court on the basis of undertaking of the defendants 1st set that they would not alienate any property during pendency



of the suit. However, despite order dated 30.03.2010 and undertaking given by the defendants 1st set, who are respondents 1st set in the present petition, the defendants 1st set executed a number of sale deeds in favour of the third parties during 2012-14. The plaintiff filed a petition on 13.09.2022 before the learned trial court for impleadment of the vendees of the defendants 1st set as party defendants in the suit. A rejoinder has been filed on 28.11.2022 by the defendants. However, the learned trial court, after hearing the parties, dismissed the petition filed by the plaintiff which is under challenge in the instant petition.

4. The learned counsel for the petitioner further submits that the said order is against the settled principles of law and is not sustainable. The learned trial court has dismissed the petition merely on the ground that the matter was at the stage of final arguments and if the purchasers were made party, the same would result in prolonging the matter and the defendants would be seriously prejudiced, but the same could not be made a ground for dismissal of the petition filed by the plaintiff for impleadment of the purchasers. The learned counsel further submits that if the purchasers are not made parties, since a large number of persons have been sold the suit property, unnecessary



complexity would arise in the matter and will give rise to further litigation and to avoid the multiplicity of the litigation and to safeguard the interest of all the parties, it was necessary to implead the purchasers as party defendants.

5. On the other hand, learned counsel appearing on behalf of the respondents 1st set vehemently contends that there is no infirmity in the impugned order and the same does not need any interference. The learned counsel further submits that the plaintiff/petitioner has filed the petition for impleadment after much delay as all the transactions had taken place from the year 2012 to 2014 as submitted by the plaintiff and application has been filed for impleadment only in the year 2022. The plaintiff was knowing the facts all along, but only to linger the disposal of the title suit, the plaintiff filed the petition after such inordinate delay. The learned counsel further submits that the learned trial court has taken note of the fact that all such transfer of the property would be hit by doctrine of *lis pendens* and the rights of all such persons would be guided by what is decided regarding the rights of their vendor. Moreover, such purchasers would not get any right if the sale has been made without permission of the court during the pendency of the suit.

6. I have given my thoughtful consideration to the



rival submission of the parties. 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 although no relief in the suit was claimed against such person.

9. Further, 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 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. The reasoning adopted by the learned trial court for dismissal of the petition is flawed in the sense that the learned trial court entirely went by the stage of the suit before it and on consideration that it will cause delay in disposal of the suit. The learned trial court went to the extent on recording that if the purchasers are made party, the defendants would be seriously prejudiced and there would be problem in disposal of the suit. Apparently these facts could not be made a ground for refusing the prayer of the plaintiff. If the defendants by their own act have created third party interest and has complicated the matter, they cannot take advantage of own wrong and now claim that subsequent purchasers should not be made parties. If



the subsequent purchasers are not made party, it would result in complexity in the matter since a simple partition suit has been unnecessarily complicated by the acts of defendants 1st set by creating third party interest and such subsequent purchasers are proper parties though they may not be necessary parties. It is also surprising that subsequent purchasers have not come forward before the court to get themselves impleaded.

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 plaintiff. Hence, the order dated 09.01.2023 passed by the learned Sub Judge-VI, Ara in Title Suit No. 12 of 2007 is set aside. Consequently, the petition dated 13.09.2022 filed by the plaintiff/petitioner under Order 1 Rule 10 read with Section 151 of the Code is allowed.

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

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.08.2024
Transmission Date	NA

