

(2009) 03 PAT CK 0095
In the Patna High Court

Anita Kuwar and Others

APPELLANT

Vs

Chandra Bhushan Singh and Others

RESPONDENT

Date of Decision : 04-03-2009

Acts Referred:

Citation : (2009) 03 PAT CK 0095

Final Decision : Dismissed

Judgement

Raviranjan, J.—Defect Nos. 3 and 4 as pointed out by the Stamp Report are ignored.

2. Heard, Mr. Jitendra Kishore Verma, learned Counsel for the appellants-petitioners as well as Mr. Arun Kumar Rai, learned Counsel for the respondent-opposite party No. 1.

3. The petitioners are aggrieved by the order dated 26-11-2008 passed by the Additional District Judge, F.T.C.-II, Saran at Chapra in Title Appeal No. 4 of 1986 whereby a petition under Order 1, Rule 10, CPC for imp leading the purchaser from the respondent opposite party No. 1 as a party respondent in the appeal has been refused by the lower appellate Court.

4. Learned Counsel for the petitioners submits that though the transaction is of the period of the pendency of the appeal without taking any leave from the Court concerned, still the purchaser should have been impleaded as a party in this appeal to avoid the multiplicity of the proceedings. In support of his submissions, he has relied upon a decision of Apex Court in Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, wherein substitution of purchaser on account of sale in place of vendor was permitted by the Apex Court.

5. The trial Court on consideration of the rival submissions has come to the conclusion that the transaction concerned is hit by the principle of lis pendens as without taking leave of the Court of the aforesaid transaction has been done and as such, the transferor and transferee has taken a risk. It has come to the conclusion that the purchasers are not the necessary party for deciding the lis

between the parties and thus, has rejected the prayer. In this connection a decision of Apex Court in Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another, wherein it has been held that transferee pendente lite without taking leave of the Court cannot be impleaded as a party in all cases. Relevant passages of the aforesaid decision of the Supreme Court is as under:

10. The decisions cited and relied on behalf of the appellant turned on the facts of each of those cases. They are distinguishable. There is no absolute rule that the transferee pendente lite without leave of the Court should in all cases be allowed to join and contest the pending suits. The decision relied on behalf of the contesting respondents of this Court in the case of Sarvinder Singh Vs. Dalip Singh and Others, fully supports them in their contentions After quoting Section 52 of the Transfer of Property Act, the relevant observations are thus:

Section 52 of the Transfer of Property Act envisages that:

During the pendency in any Court having authority within the limits of India...of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

It would, therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the Court. Admittedly, the authority or order of the Court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of lis pendens by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit.

11. In case of Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, observations relevant for the purpose of these appeals read thus:

Where a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record, yet he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary.

6. In Sunil Gupta Vs. Kiran Girhotra and Others, the Supreme Court has observed as under:

20. Even otherwise ordinarily a transferee pendente lite without leave of the Court cannot be impleaded as a party. (See Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another,

21. Furthermore the plaintiff in the suit is the dominus litis. If he intends to take a calculated risk in the matter the Court may not exercise its discretionary jurisdiction. (See Kasturi Vs. Iyyamperumal and Others, and Dhannalal Vs. Kalawatibai and Others,

7. In the present case the appellants-respondents have made prayer for impleading the transferee as party. The transferee himself has not come before the Court with a prayer of his substitution in place of the vendor as was in the case before the Apex Court in Amit Kumar Shaw and Another Vs. Farida Khatoon and Another,

8. In view of the above, this Court does not find any jurisdictional error in the impugned order dated 26-11-2008.

9. As a result, this Civil Revision application is dismissed.

10. Learned Counsel for the opposite party No. 1 further submits that the appeal is of the year 1986 and is pending for its disposal even after about more than 22 years of its filing. In view of aforesaid, the lower appellate Court is directed to take immediate steps for expeditious disposal of this appeal preferably within six months from the date of receipt/production of this order.