
(2015) 09 PAT CK 0055

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13930 of 2004

Shashi Bhushan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 227
Transfer of Property Act, 1882 — Section 52

Citation : (2015) 09 PAT CK 0055

Hon'ble Judges : Kishore Kumar Mandal, J

Bench : Single Bench

Advocate : Nawal Kishore Singh and Madan Prasad Singh, for the Appellant

Final Decision : Allowed

Judgement

Kishore Kumar Mandal, J—Heard Mr. Nawal Kishore Singh for the petitioner. No one has appeared on behalf of the respondent No. 8, the subsequent purchaser of the suit property from the contesting defendant Nos. 6 and 7.

2. The plaintiff of Title suit No. 94 of 1990 has filed the application questioning the legality of the order dated 22.7.2004 passed by the trial Court in Title Suit No. 94 of 1990 whereby the application under Order 1, Rule 10 of the Code of Civil Procedure (for short "the Code") filed by respondent No. 8 was allowed.

3. Background facts, in brief, are: the plaintiff-petitioner filed the suit for specific performance of contract on the basis of the registered agreement for sale dated 12.12.1986 executed by Sudisht Narain Singh, the father of the defendant Nos. 1 and 2 (respondent Nos. 6 and 7 in the present writ application). 20 Kathas of land was negotiated for sale for Rs. 20,000/- whereafter the plaintiff is said to have paid 17,000/- to the prospective vendor and the remaining amount remained to be paid before the execution of the sale deed. The agreement suggests that on receiving part of the consideration amount, the purchaser(plaintiff) was put in possession of the suit property. The executor of

the agreement for sale subsequently died. His wife also died. In such circumstances, the suit was filed in which the two daughters of late Sudisht Narain Singh being the surviving heirs and legal representatives were impleaded as defendants. On 26.8.2002 an application was filed on behalf of the contesting defendants accepting the case of the plaintiff. The same was pressed on 22.11.2002. On the same day, an application without serving copy thereof on the plaintiff and defendants was filed on behalf of the respondent No. 8 stating therein that she being the subsequent purchaser of the suit property by virtue of a registered deed of sale on 6.5.1991 from the two daughters of late Sudisht Narain Singh be impleaded as defendants. The trial Court vide order dated 22.11.2002 accepted the application filed on behalf of the contesting defendants (the two daughters). No order on the application filed by the respondent No. 8 under Order 1 Rule 10 of the Code was passed as the copy whereof was not served on the contesting parties. The matter was adjourned and on 22.7.2004 the Court took up the application filed by the respondent No. 8 (subsequent purchaser). A rejoinder thereto was filed on behalf of the plaintiff. The trial Court having found the applicant of the petition dated 22.11.2002 the subsequent purchasers although during pendency of the suit under registered sale deed allowed her to be added/impleaded as defendant for proper resolution of the disputes between the parties. Aggrieved by the said order the present writ application has been filed.

4. Mr. Singh, while criticizing the order impugned in the present writ application, has submitted that admittedly the subject land of the suit was transferred by the contesting defendants during the pendency of the suit. No permission was sought by the transferor or the transferee before executing the sale deed. Such sale would be hit by the principles embodied in Section 52 of the Transfer of Property Act (for short "the T.P. Act"). The respondent No. 8 was, therefore, neither a necessary nor a proper party to be impleaded in the present case. It is next submitted that even going by the case of the respondent No. 8 such sale was effected in her favour on 06.05.1991. For long 12 years no such application for impleadment was filed by the respondent No. 8. This long delay itself denotes the malafide intention of the respondent No. 8 to protract the suit which remained pending for disposal on the file of the trial Court since 1990. He further argued that in a case like this the subsequent purchaser may have a case of having purchased the suit land bonafidely for value without notice but she can always file a separate suit for the same. However, in the present case admittedly the plaintiff on payment of major part of the consideration money was put in possession of the property. Such possession of the plaintiff over the suit land should be considered as notice to all concerned particularly the purchaser of the suit land.

5. I have considered the submissions and perused the materials on record. The question is in a case of specific performance of contract the purchaser of the suit property during the pendency of the suit can be considered as the necessary party to the suit or not. Indisputably no relief against the subsequent purchaser

has been prayed in the suit. In *Sanjay Verma Vs. Manik Roy and Others*, AIR 2007 SC 1332 : (2007) 2 CTC 562 : (2007) 147 PLR 229 : (2006) 14 SCALE 81 : (2006) 13 SCC 608 : (2006) 10 SCR 469 Supp : (2007) AIRSCW 1490 : (2006) 8 Supreme 1007 , the Apex Court considered the scope of Order 1, Rule 10 of the Code as also the provision contained in Section 52 of the T.P. Act. The facts of the case have been noticed in paragraph Nos. 3, 4, 5 and 6 of the report. It appears therefrom that during the pendency of the suit wherein an interim order was passed the subject property was sold. The purchaser filed an application for impleadment which was rejected referring to the principles embodied in Section 52 of the T.P. Act. Aggrieved by the order passed by the trial Court, a writ petition was filed before the High Court which was allowed. The same was assailed before the Hon"ble Supreme Court. The Supreme Court taking note of Section 52 of the T.P. Act as also the principles enunciated in *Sarvinder Singh Vs. Dalip Singh and Others*, (1996) 6 AD 546 : (1996) 6 SCALE 59 : (1996) 5 SCC 539 : (1996) 4 SCR 271 Supp held 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 which admittedly was not obtained. The order passed by the High Court was set aside and that of the trial court was restored. Again in the case of *Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another*, AIR 2004 SC 173 : (2003) 8 JT 478 : (2003) 9 SCALE 393 : (2004) 1 SCC 191 : (2003) 5 SCR 290 Supp the Supreme Court relying on the earlier order observed as under in paragraph No. 12:--

"12. The above statement of law by this court in the cases (supra) clearly shows that the trial court has rightly exercised its discretion in rejecting the three applications for impleadment of the transferee pendente-lite as party to the suits and for amendment of the pleadings. The High Court was also justified in refusing to interfere with the order of the trial court. Consequently, there is absolutely no merit in any of these appeals. They are, accordingly dismissed with costs to be borne by the petitioner of the contesting respondents."

6. The statement of law which was approved was to the effect where a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the party 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 adversary. The question is what remedy the subsequent purchaser is left with. The counsel for the petitioner has rightly pointed out that the subsequent purchaser can file a suit to avoid the relief which the Court would grant to the plaintiff of the present suit. The sale deed which shall be executed by the heirs and legal representatives of late Sudisht Narain Singh can be challenged by the subsequent purchaser on any grounds available to her.

7. One aspect of the matter which appears highlighted from the records of the case needs attention. According to the respondent No. 8, she purchased the land

from the two daughters of late Sudisht Narain Singh in the suit in the year 1991. She could have immediately applied for being impleaded in the case. She did not do so and waited on the wings and when the principal defendants filed an application on 26.8.2002 which was subsequently pressed on 22.11.2002 the application was filed. In Bibi Zubaida Khatoon (supra), the Apex Court has noticing the long and unexplained delay in filing such application disapproved filing of such application for impleadment in the suit which remained pending for consideration and disposal for more than 10 years. It is seen from the records of this case that the suit was filed in the year 1990 whereas the application was filed on 22.11.2002. The principles of lis pendens embodied in Section 52 of the T.P. Act are in accordance with the equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. In the case at hand from the pleadings made in the plaint, it appears, that the prospective purchaser of the suit property was put in possession. This Court would, however, not further dwell upon this aspect of the matter since the same may prejudice the respondent No. 8 in her prospective action against the relief which ultimately would be granted to the plaintiff of the suit. This Court holds that the trial Court in exercise of its jurisdiction acted with material irregularity which has occasioned failure of justice which needs to be corrected by invocation of writ jurisdiction under Article 227 of the Constitution of India.

8. The application is allowed. The order dated 22.07.2004 passed in Title Suit No. 94 of 1990 contained in Annexure-3 is set aside. No order as to cost(s).