
(2015) 02 PAT CK 0118
In the Patna High Court
Case No : CWJC No. 13593 of 2010

Uday Pratap Tiwary

APPELLANT

Vs

Mosmat Janaki Kuer and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)
Constitution of India, 1950 — Article 227
Specific Relief Act, 1963 — Section 19(b)

Citation : (2015) 4 PLJR 100

Hon'ble Judges : Vijayendra Nath, J.

Bench : Single Bench

Advocate : Ravi Kumar, for the Appellant

Judgement

Vijayendra Nath, J.—Heard Mr. Ravi Kumar, the learned counsel appearing on behalf of the petitioner. Calling in question the order impleading the intervener as party in the suit, the plaintiff has filed this application under Article 227 of the Constitution of India.

2. The plaintiff has claimed to have purchased the suit land from the defendants by a sale deed. However, it is the case of the plaintiff that subsequent to the registration of the sale deed the defendants did not hand over the registration receipt. Thereupon, the plaintiff has filed the suit for declaration of title and for further direction to the defendant to hand over the registration receipt. During the pendency of the suit, the defendant (vendor of the plaintiff) transferred the suit property by registered sale deed in favour of the intervener and on that basis the intervener filed the petition for impleadment as party defendant in the suit. By the impugned order, the learned court below has allowed the prayer of the intervener-defendant and impleaded him as intervener-defendant in the suit.

3. Mr. Ravi Kumar, the learned counsel for the petitioner has strenuously argued that the learned court below has not acted within its jurisdiction in allowing the impleadment of the intervener as defendant in the suit. It has been submitted by

the learned counsel that the intervener was a complete stranger to the controversy in the suit and therefore by no stretch he can be said to be a person necessary for effective adjudication of the controversy in the suit in terms of the provision of Order 1, Rule 10(2) C.P.C. The learned counsel has placed reliance on the decision of this Court in the case of Kauleshwari Devi Vs. The State of Bihar, and in the case of Manoj Kumar Vs. The Patna Municipal Corporation, and has submitted that the aforesaid decisions by this Court has been rendered relying upon the decision of Apex Court in the case of Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others, as well as in the case of Kasturi Vs. Iyyamperumal and Others, .

4. After considering the submissions and perusing the impugned order, it is limpid that the suit has been filed by the plaintiff for declaration of title and also for the relief for a direction to the defendant to hand over the registration receipt to the plaintiff. In essence the suit is for specific performance of contract as admittedly after executing the sale deed, the vendor defendant has not handed over the registration receipt to the purchaser-plaintiff. In view of the principles laid down by the Apex Court in the case of Janak Dulari Devi and Another Vs. Kapildeo Rai and Another, the exchange of registration receipt, in the State of Bihar, is necessary for transfer of the title over the property subject matter of the sale deed. It is also not in dispute that the defendant has transferred the suit property in favour of the intervener-defendant during the pendency of the suit. In view of the provision of Section 19(b) of the Specific Reliefs Act the defendant is a person who has acquired title subsequent to the purchase by the plaintiff and he may have the defence of claiming to be a bona fide purchaser for value without notice of the earlier agreement to sale.

5. The contention raised on behalf of the petitioner is not on virgin ground in view of the authoritative pronouncement by the Apex Court in this regard. In the case of Kasturi Devi (supra) in the context of a suit of specific performance of a contract for sale, it has been held that "a purchaser is a necessary party as he would be affected if he had purchased with or without notice". In the case of Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. and Others, , the Apex Court while considering the scope of Order 1, Rule 10(2) C.P.C. has also taken into notice Section 19(b) of Specific Reliefs Act and has ruled that specific performance of contract cannot be enforced against a person who is a transferee from the vendor for valuable consideration and without notice of the original contract which is sought to be enforced in the suit.

6. Applying these principles to the present fact situation, it is manifest that the intervenor-defendant has purchased the entire suit land and his interest in the suit land is not peripheral but substantial. From the rejoinder (Annexure-5) filed by the petitioner against the petition for intervention, it does not appear that the fact of purchase by the intervenor-defendant has been denied. There is also no allegation that the intervenor-defendant has the prior knowledge of the suit before he purchased the suit property. This Court, therefore, is not inclined to

interfere with the impugned order and it is held that there is no failure of jurisdiction or material irregularity committed by the learned court below. The impugned order is also in consonance with the principle of avoiding multiplicity of proceedings. In view of the aforesaid reasons and discussions, this Court finds no merit in this writ application which, accordingly, is dismissed.