

Title Suit No. 57 of 2017

ORDER -

23 / 07 / 2019 - Today record is put up for passing an order on the petition dated 03 / 12 / 2018 and dated 20 / 12 / 2018 filed by plaintiff under Order 1 Rule 10(2) C.P.C to implead newly purchaser of the suit land Nibha Devi W/O- Arun Kumar as defendant no -07 and Archana Devi W/O- Bambam Rajak as defendant no -08 . According to the plaintiff he has filed the present suit for partition of land detailed in Schedule-I of the plaint against her co-sharer defendants, apart from declaration that Schedule-I land is the joint family property of the parties to the suit and also to declare that sale deeds dated 13 / 06 / 2001 and 14 / 07 / 2012 and 05 / 10 / 2017 executed by defendant no. 5 in favour of defendant no. 2 to 4 detailed in Schedule-II, III and IV of the plaint is fraudulent, illegal and also without right title and interest and also to restrain the defendant no. 2 to 5 from interfering in the peaceful possession of the plaintiff by rule of ad-interim injunction. Plaintiff further submits that after having knowledge of this suit defendant no. 5 namely Ram Prasad Sah transferred land of suit plots measuring an area of 01 katha 10 dhurs appertains to survey plot no. 157, Khata no. 194, Tauzi No. 6906, Thana No. 158 situated in Mauza-Salauna under the boundaries north - Shankar Sah , South - Niz Vendor , East - Pagloo Sah , West - Pakki Sarak by means of executing collusive and fraudulent sale deed dated 17 / 11 / 2018 in favour of Nibha Devi W/o - Arun Kumar Chourasia **as well as** 1 katha 14 dhurs appertains to survey plot no. 157, Khata no. 194, Tauzi No. 5906, Thana No. 158 situated in Mauza-Salauna

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under the boundaries North- Nibha Devi W/o- Arjun Chourasia, South- Naresh Choudhary, East- Ram Narayan Sah @ Paglu, West- Pakki Sarak by means of executing collusive and fraudulent sale deeds dated 07.12.2018 in favour of Archanan Kumari W/o- Sri Bambam Rajak, resident of Village- Salauna, Pergana- Ballia, P.S. and S.D.- Bakhri, District- Begusarai during the pendency of this suit which is without consideration and also to contrary of law and aforesaid transfer by defendant no. 5 Ram Prasad Sah in favour of Nibha Devi W/O- Arjun Chourasia and Archana Devi W/o- Sri Bambam Rajak are subsequent events. He also submits that in order to avoid multiplicity of suits and also to avoid other litigation purchasers Nibha Devi W/O- Arun Kumar and Archana Devi W/o- Sri Bambam Rajak required to be added as parties to the suit and in the interest of justice it is essential to implead Nibha - Devi W/O- Arun Kumar and Archana Devi aforesaid as parties to the suit.

Defendant No-5 filed his rejoinder on the date 24 / 06 / 2019 and submits that the petitions dated 03.12.2018 & 20.12.2018 filed by the plaintiff is totally misconceived, untenable and same is fit to be rejected and the petition under reference the plaintiff has sought to implead one Nibha Devi W/o- Arun Kumar Chaurasia and Archana Devi W/o- Sri Bambam Rajak as defendant no. 7 & 8 which is against the settled principle of law. Defendant further submits that as a matter of fact this defendant in Para 10, 14 of his written statement has specifically stated that this defendant has no male issue rather he has only two daughters, one of them is plaintiff in the instant suit and

another daughter is defendant no. 1 in the instant suit who are looking after and maintaining this defendant and his wife and due to old age and ailment his defendant is unable to work and earn his livelihood and in this way for maintenance and treatment this defendant is compelled to sell his land because there is no alternative before him as well this defendant is contesting this suit to protect his right title as well as purchaser from him and in this way it is not necessary to implead the purchaser from this defendant, and on this score the petition under reference is fit to be rejected and apart from this the present transaction is lis-pendens transfer as same has taken place during the pendency of instant suit, hence there is no necessity to implead the purchaser, because if this defendant will succeed in the present suit his purchaser will automatically succeed and if this defendant will fail in the present suit his purchaser will automatically fail and the allegation of the plaintiff that the transaction is without consideration and collusive is totally false, incorrect and against the actual state of affairs and the plaintiff is trying to put this defendant in pressure and to create trouble in his survival has filed instant suit so that the purchaser may make pressure upon this defendant, otherwise there is no merit in the petition of the plaintiff and hence in the view of matter referred above the petitions dated 03 / 12 / 2018 & 20 / 12 / 2018 as filed by the plaintiff is fit to be rejected.

Heard both the parties and perused the record .
After perusal of record it appears that defendant no -05 executed lands in favour of the Nibha Devi W/o- Arun Kumar Chaurasia and Archana Devi W/o - Sri

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Bambam Rajak . It is the opinion of the court that 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 but later on some consequential development it appears that relief against the new party (proposed defendant no - 7 & 8) are required and addition of new party is essential for determining the suit in controversy then right to be impleaded as per the wishes of the plaintiff should be allowed under order 1 rule 10 (2) C.P.C which provides for impleadment of proper or necessary parties. Hence petition dated 03 / 12 / 2018 and 20 / 12 / 2018 under order 1 rule 10 (2) C.P.C. filed by the plaintiffs are hereby allowed . Plaintiff is directed to take proper action in this context . Put on the date 17 / 08 / 2019 for complying this order .

~~23.07.19~~

SUB-JUDGE

BAKHARI (BEGUSARAI)