

In the Court of Sub-Judge, Kahalgaon

T.S No. 142/2011

Dated 06.01.2020

1. This record has been placed before me today for order on petition dated 26.03.2018 filed by petitioners Naresh Mandal and Jayram Mandal u/O 1 r 10 read with section 151 C.P.C. for impleading them as party in the present suit. A rejoinder to the same has been filed by plaintiff on 15.05.2018. The learned counsel for the parties were heard at length on the last date.

2. The learned counsel for the petitioners submits that the khatian of the suit land is in the name of Paro Mistri the grandfather of the defendants. The petitioners have purchased 3.125 dec. land each situated at Mauza Buddhuchak P.S. Ismailpur under khata no. 258 khesara no. 2569 and 2581 by two sale deeds dated 29.07.2011 from Diwakar Ram. The Diwakar Ram nephew of the defendant and grandson of Late Ram Kishun Ram has sold out his share which was allotted to him in the family and the petitioners are in peaceful possession since the date of purchase. Their name is mutated in the serista of the state and they are regularly paying the rent. In khesara no. 2581 which is the suit land the purchased land of petitioners is also included and they have filed a petition for measurement of aforesaid land by Amin before D.C.L.R Naugachia. The petitioners have recently came to know about the present suit with respect to khesara no. 2581 which is the part of their purchased land, hence they have filed the present petition for impleading them in the present suit. The petitioners have got every right, title, interest or possession over their respective purchased area which includes the part of khesara no. 2581. The learned counsel further submits that if the petitioners are not impleaded in the present suit their right, title, interest and possession will be badly affected and adjudication of this case could not be done properly in the eye of law. On these grounds the learned counsel submits that it is necessary to implead the intervenor petitioners as necessary party in the present suit in order to enable the court effectually and completely adjudicate upon and settled all the question in the suit.

3. While opposing the petition the learned counsel for the plaintiff submits that the petition is not maintainable. The plaintiff has filed the present suit against defendant Haribansh Ram for Specific Performance of Contract which the defendant got in succession. The said land is ancestral land of defendant which he got during partition. The khatian of suit land is in the name of Ram Kishun Ram, the father of defendant and khesara no. 2581 is his self acquired property. The father of defendant has partitioned the property during his lifetime among his four sons and each of the co-sharer got 81¼ dec. land in his share and they are in possession over the same since the lifetime of their father.

The 1.26 acre land of khesara no. 2559, 1.99 acre land of khesara no. 2581 total 3.25 acre is in one block and in this 81¼ dec. from north of khesara no. 2559 is of Gopal Ram, 44¾ dec. in khesara no. 2569 and 36½ dec. in khesara no. 2581 just south to Gopal Ram the land of Yugal Ram is situated and Haribansh Ram has got 81 ¼ dec. in khesara no. 2581 just south to Yugal Ram and in the extreme south of khesara no. 2581 Rajendra Ram got 81¼ dec. land in succession. The plaintiff has also given the G.T. of Haribansh Ram. The further case of plaintiff is that after death of Yugal Ram his sister Sumitra Devi and Kiran Devi and nephew Diwakar Ram have executed sale deeds in favour of 21 persons on 22.11.2006 and in the boundaries of all these sale deeds during south the name of Haribansh Ram is mentioned and this fact has been admitted by the heirs of Haribansh Ram by signing on the deed. In the para 2 of the petition there is no mentioned about the boundaries of each plot no. although the land can only be identified by boundary, so it is not clear that how much land was acquired by the vendor of petitioners. Diwakar Ram has also executed sale deed in favour of plaintiff on 22.11.2006 and in this towards South boundary name of Haribansh Ram is mentioned. Mere entry of name in the government serista does neither create nor extinguished title. In the alleged sale deed only khesara no. 2581 is mentioned merely mentioning of khesara no. does not entitled the petitioner to become party in the present suit. There is nothing to show that the land purchased by the sale deed is part of the suit land. In the schedule of the plaint towards north Yugal Ram is mentioned and towards south Rajendra Ram is mentioned. The petitioners have not filed any document like family settlement or Amin report in support of their petition neither the petitioner nor their vendor have filed any case before the court. So there is no question of any harm to them. The petition lacks merit and is liable to be rejected.

4. Heard both side and perused the record from perusal of record it appears that the plaintiff has filed the present suit for a decree of Specific Performance of Contract dated 21.10.2009. The suit land is 10 dec. land of plot no. 2581 khata no. 258 Mauza Buddhuchak, District Bhagalpur. The petitioner claim that they have purchased 6¼ dec. land in plot no. 2569 and 2581. The petitioner have brought on record the copy of their sale deed. On perusal of their sale deed it appears that in this it is not mentioned that how much land the petitioners have purchased in which khesara? The plaintiff has alleged in his rejoinder that the total area of plot no. 2581 is 1.99 acre which is much more then the claim of both the parties. Admittedly the vendor of the petitioners are different then the parties to this suit. The petitioners does not appear to be a necessary party in a suit were he has no transaction with any of the party. The petitioners cannot be made a party in a suit for Specific Performance of contract in respect of a property in which his vendor is not party. The claim of petitioner that the suit land fell into the share of

his vendor Diwakar Prasad Ram is not the subject matter of this suit, which is a suit for Specific Performance of contract. The plaintiff has not claimed any relief against the petitioners. The petitioners doesn't appears to be proper and necessary party to the suit. Under the above facts and circumstances and discussion made above I reach to the conclusion that the petition dated 26.03.18 is devoid of merit and is accordingly rejected.

Sub Judge, Kahalgaon