

CASE NO.:

Appeal (civil) 854-855 of 1998

Appeal (civil) 856 of 1998

PETITIONER:

Bibi Zubaida Khatoon

RESPONDENT:

Nabi Hassan Saheb & Anr.

DATE OF JUDGMENT: 06/11/2003

BENCH:

Shivaraj V. Patil & D.M. Dharmadhikari

JUDGMENT:

J U D G M E N T

Dharmadhikari J.

These appeals are directed against a common judgement dated 28.7.1997 passed by High Court of Patna in two revisions under section 115 of the Code of Civil Procedure [hereinafter referred to as 'the Code'].

In the cross suits, one filed for redemption of mortgage and the other filed for specific performance of Agreement of Sale, the petitioner made two applications, for her impleadment as co-plaintiff in one suit and defendant in the other. Third application was filed for amendment of the pleadings consequent to her proposed joinder as a party in the two suits. The three applications were made respectively under Order 1 Rule 10, Order 22 Rule 10 and Order 6 Rule 17 of the Code.

According to the petitioner during pendency of the suits, she has purchased the suit property in the year 1996 from the original plaintiff \026 Amichand Agarwal and has, thus, acquired in his place the right of redemption of the mortgaged suit property. In the cross suit of the opposite party seeking specific performance of the Agreement of Sale based on the same acquisition of title during pendency of suit, joinder was sought to that suit as defendant.

The trial court by order dated 11.10.1996 rejected the prayer for joinder of the petitioner in the two suits observing that the property having been purchased during pendency of the suit the decree passed in the suit shall bind the transferee pendente-lite. It also observed that suit being old of the year 1983, its earliest disposal is necessary.

For the same reasons that two other applications under Order 1 Rule 10 and Order 6 Rule 17 were also rejected by the trial court.

By the impugned common order, the High Court in its revisional jurisdiction which was invoked under section 115 of the Code, declined to interfere. Aggrieved thereby, the present appeals have been filed.

The learned senior counsel Shri S.B. Sanyal strenuously urged that even though the petitioner is a transferee pendente-lite within the meaning of section 52 of the Transfer of Property Act to afford effective opportunity to her to prosecute the suit for redemption of mortgage and the counter suit for specific performance of the contract, her joinder in two suits as party and prayer to bring subsequent events on record by proposed amendment to the

pleadings ought to have been allowed by the trial court. It is submitted that the High Court ought to have interfered in the orders of the trial court as the latter had failed to exercise its judicial discretion in accordance with law. Reliance is placed on Khemchand Shankar Choudhari & Anr vs. Vishnu Hari Patil & Ors [1983(1) SCC 18]; Jayaram Mudaliar vs. Ayyaswami & Ors [AIR 1973 SC 569]; Savitri Devi vs. District Judge, Gorakhpur & Ors. [AIR 1999 SC 976]; Saila Bala Dassi vs. Nirmala Sundari Dassi & Anr. [1958 SCR 1287]; and Dhurandhar Prasad Singh vs. Jai Prakash University & Ors. [2001 (6) SCC 534].

The learned counsel, appearing for the contesting respondents, supported the impugned orders of the trial court and the common order passed by the High Court. Reliance is placed on Savinder Singh vs. Dalip Singh & Ors. [1996 (5) SCC 539].

It is not disputed that the present petitioner purchased the property during pendency of the suit and without seeking leave of the court as required by section 52 of the Transfer of Property Act. The petitioner being a transferee pendente lite without leave of the court cannot, as of right, seek impleadment as a party in the suits which are long pending since 1983. It is true that when the application for joinder based on transfer pendente lite is made, the transferee should ordinarily be joined as party to enable him to protect his interest. But in instant case, the trial court has assigned cogent reasons for rejecting such joinder stating that the suit is long pending since 1983 and prima facie the action of the alienation does not appear to be bona fide. The trial court saw an attempt on the part of the petitioner to complicate and delay the pending suits.

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 Savinder Singh (supra) 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 \005.. 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. "

In case of Dhurandhar Prasad Singh(supra), 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.

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.

