

**Suresh Mehera and Four ors. Vs. Subha Chaulia and 21 ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/535884](http://sooperkanoon.com/535884)

**Court :** Orissa

**Decided On :** Nov-03-2009

**Reported in :** 2009(II)OLR984

**Judge :** S.C. Parija, J.

**Appellant :** Suresh Mehera and Four ors.

**Respondent :** Subha Chaulia and 21 ors.

**Disposition :** Application allowed

**Judgement :**

ORDER

**S.C. Parija, J.**

1. Heard Shri S.P. Mishra, learned Senior Counsel for the petitioners. None appears for the opposite parties 1 and 2 in spite of notice.

2. This writ application is directed against the order dated 03.04.2008 passed by the Civil Judge (Sr. Divn.), Sonapur, in FDTs No. 31 of 2001, rejecting the petitioners' application under Order 1 Rule 10 CPC, for being impleaded as parties to the suit.

3. The petitioners filed application under Order 1 Rule 10 CPC before the learned Civil Judge in the final decree proceeding registered as FDTs No. 31 of 2001

praying for being impleaded as parties to the suit. The case of the petitioners was that they have purchased part of the suit land from Padmabati Mishra-defendant No. 20, which was admitted by the plaintiffs. After sale of the suit land in favour of the present petitioners, the said defendant No. 20 having no further interest in the suit land, did not appear in the suit and was set ex parte, the petitioners who are bona fide purchasers of a part of the suit property and are in physical possession of the same since the date of its purchase and having interest in the suit, filed application under Order 1 Rule 10 CPC for being impleaded as parties in the suit. The plaintiffs filed objection to the said application of the present petitioners to be impleaded as parties.

4. Learned Trial Court on a perusal of the materials on record, came to hold that as the present petitioners are not directly transferee from the co-sharers, there is no nexus between the petitioners and the parties to the suit,, who are entitled to share out of the suit land and as such, they cannot be treated as necessary parties in the suit. The operating portion of the impugned order reads as under:

On perusal of materials on case record, it is found that the suit is preliminarily decreed as per judgment dtd. 17.9.2004 passed in the present suit. It is ordered for partition of the suit property and also for adjustment of the property sold by defendant Nos. 1 and 2 out of their share. Admittedly, the petitioners claimed to have purchased the suit land after institution of the suit. The petitioners have also filed certified copies of Regd. sale deeds which relates to dated 20.7.01 and 21.7.01 respectively. The present suit is filed on 2.5.01. Thus, it is evident that the alleged sale transactions were made during pendency of the suit. However, the petitioners claimed that they have no knowledge about such pendency of the suit at the time of the alleged transfer of portion of the suit land. So, it is to be seen whether the petitioners are necessary parties in the present suit. They claim to have purchased portion of the suit land from defendant No. 20. On perusal of materials on case record, it is found that the defendant No. 20 has purchased portion of the suit land from defendant Nos. 1 and 2. So she is a transferee from the defendant Nos. 1 and 2, who are co-sharers in respect of the suit land. Thus, the present petitioners are purchasers from a transferee, who had purchased portion of suit land from co-sharers. Thus, the present petitioners are not directly

transferees from co-sharers. So, there is no nexus between the petitioners and the parties who are entitled to share out of suit land as such they cannot be treated as necessary parties, in the present suit. So, the petition filed by them stands rejected.

5. Shri S.P. Mishra, learned senior Counsel, appearing for the petitioners, with reference to the impugned order submitted that as the petitioners are admittedly lis pendens purchasers of a portion of the suit property from the defendant No. 20, they have vital interest in the pending suit and are therefore proper parties to the proceeding. In this regard, it is submitted that the defendant No. 20 having sold her interest in the suit property, is no more interested to proceed with the suit and due to her inaction, she has been set ex parte and therefore it is only just and proper that the present petitioners should have been impleaded as parties to the suit, to enable them to protect their interest in the suit.

6. Learned Counsel for the petitioners has relied upon a decision of the apex Court in the case of Marirudraiah and Ors. v. B. Sarojamma and Ors. 2009 (2) CJD (SC) 1, in support of his contention that a lis pendens purchaser can be added as a party in a final decree proceeding of a suit for partition.

7. In the case of Amit Kumar Shaw and Anr. v. Farida Khatoon and Anr. AIR 2005 SC 2209, the Supreme Court, while considering the scope of Order 1 Rule 10 CPC and Order 22 Rule 10 CPC, came to find that under Order 22 Rule 10 CPC, no detailed inquiry at the stage of granting leave is contemplated. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. Hon'ble Court further observed that since under the doctrine of lis pendens a decree passed in the suit, during pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed. The Hon'ble Court observed that the object of Order 1 Rule 10 CPC is to discourage contest on technical pleas and to have honest and bona fide purchasers from being non-suited. The power to strike out or add parties can be

exercised by the Court at any stage of the proceedings.

8. In the case of *Dhanalakshmi and Ors. v. P. Mohan and Ors.* AIR 2007 SC 1062 : 2007 (I) OLR 494 the Supreme Court, while interpreting Section 52 of the T.P. Act and Order 1 Rule 10 CPC, has held that a lis pendens purchaser is a necessary and proper party to the suit.

9. On an analysis of the principles of law, as discussed above, it is evident that the proposition of law that a lis pendens purchaser is not a necessary party to the suit is not an absolute one and the question depends upon facts and circumstances of each case and the Court in a given case has the discretion to add a pendente lite transferee as a party to the suit for a substantial justice and effectual adjudication of the suit, and also to avoid multiplicity of litigations. As per the provision of Section 52 of the T.P. Act, a transferee pendente lite is treated in the eye of law as representative-in-interest of the transferee, who shall be bound by the decree that may be passed against the transferee. Therefore a transferee pendente lite has vital interest in the suit property. In a contingency where the transferee after alienating the suit property and having no more any interest, does not properly defend the suit and colludes with the adversaries, the alienee pendente lite may be joined as a party and on motion being made, the Court should exercise its discretion judicially and an alienee should ordinarily be allowed to join the suit as a party to enable him to protect his interest.

10. The power of a Court to add a party to the proceeding may not depend solely on the question whether such party has any interest in the suit property. The Court has also to consider whether right of the said person may be affected if he is not added as a party to the suit. As a lis pendens transferee is bound by the final decree that may be passed in the suit, it is only just and proper that he should be brought on record, so as to enable him to protect his right, more so when the transferee has lost any further interest to contest the suit.

11. In the instant case, as the petitioners are admittedly lis pendens transferees, they have vital interest in the litigation and their apprehension that the defendant No. 20, having sold her interest in the suit property, has not taken any interest in the civil suit, for which she has been set ex parte is justified. Therefore, in the

interest of justice and in order to ensure effectual and complete adjudication of the suit and avoid multiplicity of litigation, it was only just and proper that the petitioners should have been impleaded as parties in the final decree proceeding of the suit.

12. Applying the principles of law as discussed above to the facts of the present case, the impugned order rejecting the petitioners' application under Order 1 Rule 10 CPC, for being impleaded as a party to the suit is not proper and justified and the same is accordingly quashed. The petitioners are permitted to be impleaded as parties to the suit and contest the same.

13. The writ application is accordingly allowed.

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