

IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 1083 of 2023

Sondipon Das, (aged about 58 years), S/o-Late Bishwanath Das, resident of Village-Matridham, Kijri, P.O. & P.S.- Namkum, District-Ranchi, Jharkhand.
..... Petitioner

Versus

1. Dr. Diwesh Kumar Bhagat, s/o- Late Kamla Prasad Bhagat
2. Smt. Shalini Bhagat, w/o-Dr. Diwesh Kumar Bhagat.
Both residents of Bhagat Mansion, Lalji Hirji Road, P.O. GPO, P.S. Kotwali, Town & District-Ranchi Defendant No. 6 & 7
3. Pramod Kumar Soni, S/o-Manilal Soni, resident of Kalicharan Street, Tharpakhna, P.O.-G.P.O., P.S.-Lower Bazaar, District-Ranchi, Jharkhand. Intervenor/Respondent

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner	: Mr. Pratyush Kumar, Advocate
For the Opp. Party Nos. 1 & 2	: Mr. Sanjay Piprawall, Advocate
	: Mr. Prince Kumar, Advocate

Order No. 20/Dated: 3rd December, 2024

1. This C.M.P has been preferred on behalf of the petitioner against the order dated 06.07.2023 in MCA Case No. 161 of 2023 arising out of Original Suit No. 173/2017 whereby the learned Court of Civil Judge (Sr. Div.)-V, Ranchi has allowed the application under Order 1, Rule 10 (2) read with Section 151 of the Code of Civil Procedure, 1908 filed on behalf of the intervenor, third party who is respondent no. 3 in this petition.
2. Learned counsel for the petitioner has submitted that the Original Suit No. 173 of 2017 was instituted on behalf of the plaintiff against Bishu Naha & Ors. in the year 2017 and the copy of the plaint of Original Suit No. 173/2017 is Annexure No. 1 of this petition. In that suit, defendant nos. 1 to 5 were deleted by the plaintiff and the contesting defendants remained defendant no. 6 and 7.
3. In that Original Title Suit No. 173 of 2017, the written statement was filed on behalf of the defendant no. 6 which is Annexure No. 2 of this petition.
4. It is also further submitted that in that suit, the matter was settled between the plaintiff and the contesting defendant nos. 6 and 7 by way of compromise under Section 89 of the C.P.C.

5. The copy of the compromise is made Annexure No. 3 of this petition.
6. Thereafter, an application was given on behalf of the third party intervenor, the respondent no. 3 Pramod Kumar Soni, the copy of the same is Annexure No. 4 of this petition. Against this petition, rejoinder were filed on behalf of the plaintiff which is Annexure No. 5 and the objections which was filed on behalf of the defendant nos. 6 and 7 are Annexure No. 6 of this petition.
7. Learned Trial Court without recording the compromise which was held between the plaintiff and the contesting defendant, this very application under Order 1 Rule 10 of the C.P.C. of the intervenor was entertained and same was allowed by passing the impugned order on 06.07.2023. Aggrieved from this very impugned order, this C.M.P. has been preferred on behalf of the petitioner.
8. Learned counsel on behalf of the opposite party nos. 1 and 2 has submitted that the application under Order 1 Rule 10 of the C.P.C has been wrongly allowed by the learned Trial Court without taking into consideration that no title, right or interest could have been conferred to the intervenor on the basis of the agreement to sell itself. So far as the power of attorney was concerned, if the same has been executed, the plaintiff who was the Principal himself and owner of the property, he had already instituted a title suit in which the compromise has arrived between the plaintiff and the contesting defendants. Therefore, the very application of the third party which has been allowed is based on perverse finding.
9. Learned counsel on behalf of the opposite party no. 3 has vehemently opposed the contentions made by learned counsel for the petitioner and also learned counsel for the opposite party nos. 1 and 2.
10. It has been submitted that indeed the plaintiff, the opposite party no. 3, intervenor had no knowledge in regard to pendency of that suit. As soon as he came to know in regard to the pendency of the suit, he had moved the application for impleadment as a defendant in that suit, reason being the very agreement to sell had been executed by the plaintiff of that suit in favour of intervenor and the power of attorney had also been executed by the plaintiff in favour of intervenor, and on the very basis of the same,

the application for impleadment was moved because while getting the sale deed executed in his favour, intervenor had also paid Rs. 7 lakhs in advance and in compliance of the very agreement to sell, no sale deed was executed by the plaintiff. It is also further submitted that the very plaintiff who had also executed the agreement to sell in favour of intervenor and also had executed the power of attorney, he had also transferred the very property to another person. The very valuable right being infringed, so there was no way out for the intervenor but to file the application under Order 1 Rule 10 of C.P.C.

11. I have heard the learned counsel for the parties and perused the materials on record.
12. Admittedly, Original Suit No. 173 of 2017 was filed on behalf of Sondipon Das against the 7 defendants with the prayer to declare the right, title and interest in the property in suit and along with that, other additional four prayers in the very suit. The copy of this plaint is Annexure No. 1 of this petition. From the perusal of this plaint itself, it is found that during pendency of this very title suit, defendant nos. 1 to 4 were deleted in compliance of the order passed by the Court dated 21.11.2022 and defendant no. 5 was also deleted in compliance of the order dated 21.11.2022. As such the lis in this very Original Suit was between the plaintiff Sondipon Das. Defendant nos. 6 and 7. It is also pertinent herein that defendant no. 7 is the wife of defendant no. 6. Hence, whatever the interest, the defendant no. 6 and 7 were claimed, both were the common.
13. In this very title suit, the written statement was filed on behalf of the defendant nos. 6 and 7, the copy of the same is Annexure No. 2 of this C.M.P.
14. Admittedly, in this Title Suit No. 173 of 2017, the compromise which had arrived between the plaintiff and the contesting defendants 6 and 7, which was arrived before the mediator in Mediation Centre, Civil Court, Ranchi. The copy of that compromise is Annexure No. 3 of this petition.
15. The intervenor who had moved the application to implead him as defendant in the title suit no. 173 of 2017 is Annexure No. 4 of this petition. From the perusal of the same, it is found that it has been averred

- by the intervenor that the plaintiff Sondipon Das had executed the power of attorney on 11.12.2012/12.12.2012 in regard to the suit property.
16. It has also been averred that the plaintiff of that suit had also executed an agreement to sell on 17.12.2022 in favour of the petitioner Pramod Kumar Soni, the intervenor and it was agreed that the land in suit was to be sold and in advance, Rs. 7 lakhs was also paid by the intervenor to the plaintiff of the suit. It was also agreed that in compliance of the agreement to sell, the sale deed would be executed on payment of rest of the agreed amount of the consideration to be paid for the property in suit.
 17. It is also further averred that second power of attorney was also executed in favour of Ajit Kumar Gupta in the year 2018. The intervenor was interested in the suit property. In view of the above, prayer was made to implead him as defendant in the Title Suit No. 173 of 2017. In support of this petition, the affidavit was also filed on behalf of the Pramod Kumar Soni.
 18. Against this application under Order 1 Rule 10 of C.P.C, the objection/rejoinder was filed on behalf of the plaintiff in which it has been stated that plaintiff had never executed any agreement to sell in the property in suit in favour of Pramod Kumar Soni on 17.12.2022 and the power of attorney, same has been revoked on 24.02.2023 vide deed no. 143/2023 and in such a way, opposed this very petition for impleadment of party.
 19. On behalf of the defendant nos. 6 and 7 of the Title Suit No. 173 of 2017, the objection/rejoinder was filed, the copy of the same is Annexure No. 6 of this petition in which almost the same defense was taken which was taken by the plaintiff of the title suit and opposed the impleadment of intervenor in the very suit on the ground because the compromise had arrived between the plaintiff and the defendant of the suit.
 20. In the very application under Order 1 Rule 10 of C.P.C, the intervenor has claimed his right or interest on the basis of the agreement to sell dated 17.12.2012 and also the power of attorney dated 11.12.2012/12.12.2012. It is the plea raised on behalf of the counsel of the opposite party no. 3 since the power of attorney and agreement, both had been executed in his favour. The very power of attorney was cancelled in the year 2023.

Therefore, the very valuable right had accrued to the intervenor in regard to the property in Original (Title) Suit No. 173 of 2017.

21. Herein it is pertinent to mention that the power of attorney which was executed by the plaintiff of Original Suit No. 173 of 2017 in favour of intervenor Pramod Kumar Soni, it is dated 11.12.2012/12.12.2012. This power of attorney is averred to be registered power of attorney.
22. As per the admission of intervenor, Pramod Kumar Soni, the agreement to sell was also executed by the plaintiff of the suit in favour of intervenor Pramod Kumar Soni on 17.12.2012 in regard to the very property in suit. After execution of the agreement to sell by the plaintiff himself, in favour of Pramod Kumar Soni on 17.12.2012 who had claimed himself to be the real owner of the property in suit, the very power of attorney which had been executed by the plaintiff on 11.12.2012/12.12.2012 stands automatically removed by the execution of agreement to sell by the Principal himself in favour of intervenor Pramod Kumar Soni. As such the right, title or interest which remains with the intervenor Pramod Kumar Soni, that is only on the basis of the agreement to sell and it is the settled law that agreement to sell does not confer any title, it confers only preferential right to the person in whose favour agreement to sell has been executed.
23. Hon'ble Apex Court held in ***Ram Baran Prasad vs. Ram Mohit Hazra & Ors.*** reported in ***AIR 1967 Supreme Court 744***, mere agreement for sale does not create right in the property in view of Section 54 read with Section 40 of Transfer of Property Act.
24. Hon'ble Apex Court held in ***Rambhau Namdeo Gajre vs. Narayan Bapuji Dhotra*** reported in ***(2004) 8 SCC 614*** held that the agreement to sell does not create an interest of the proposed vendee in the suit property.

Paragraph 13 reads as under:

Rambhau Namdeo Gajre vs Narayan Bapuji Dhotra (D) by L.Rs

13.The agreement to sell does not create an interest of the proposed vendee in the suit property. As per Section 54 of the Act, the title in immovable property valued at more than Rs. 100/- can be conveyed only by executing a registered sale deed. Section 54 specifically provides that a contract for sale of immovable property is a contract evidencing the fact that the sale of such property shall take place on the terms settled between the parties, but does not of itself, create any interest in or charge on such

property. It is not disputed before us that the suit land sought to be conveyed is of the value of more than Rs. 100/-. Therefore, unless there was a registered document of sale in favour of the Pishorrilal (proposed transferee) the title of the suit land continued to vest in Narayan Bapuji Dhotra (original plaintiff) and remain in his ownership.

25. The Hon'ble Apex Court held in ***K Basavarajappa vs. Tax Recovery Commissioner, Bangalore & Ors.*** reported in ***(1996) 11 SCC 632*** that the agreement to sell creates no interest in the property.
26. Herein the only interest or right of the intervenor Pramod Kumar Soni in regard to the property suit were only of the preferential right in regard to the property in question to get the sale deed executed in his favour. For the same, the remedy which was available to Pramod Kumar Soni was to file the suit for the specific performance of the sale deed before the competent Court and learned counsel for the intervenor herein opposite party no. 3 has submitted that the very suit for specific performance of agreement to sell has been instituted on behalf of Pramod Kumar Soni against the plaintiff Sondipon Das. As such in the very Title Suit No. 173 of 2017, intervenor Pramod Kumar Soni was neither the necessary party, nor the proper party.
27. Learned Trial Court by allowing this very application has committed the legal error and it was incumbent upon the learned Trial Court to decide the suit itself in which the compromise had already arrived before the mediator in Mediation Centre of Ranchi. Therefore the impugned order passed by the learned Court below is based on perverse finding and needs interference.
28. This C.M.P. is hereby allowed. The impugned order passed by the learned Trial Court dated 06.07.2023 is set aside and the learned Trial Court is directed to dispose of the Title Suit No. 173 of 2017 in view of the compromise which has been already filed on behalf of the parties.

29. Accordingly, this Civil Miscellaneous Petition stands disposed of.

(Subhash Chand, J.)

Rashmi/- **A.F.R.**