

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1459 of 2013

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Amrendra Kumar S/O Sri Ishwari Prasad Singh R/O Village- Pipra, P.S.-
Wazirganj, District- Gaya

.... Petitioner.

Versus

Lakhan Rabidas S/O Late Faguni Rabidas R/O Village- Pipra Pura, P.S.-
Wazirganj, District- Gaya

.... Respondent.

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Mishra, Adv.

For the Respondent/s : Mr. Prithivi Raj Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 15-12-2015

Heard the learned counsel for the petitioner and

the learned counsel appearing for the sole respondent.

This application has been filed questioning the legal sustainability of the impugned order by which the learned court below has allowed the impleadment of the sole respondent of this application as a party-respondent in the appeal.

The relevant facts are that the plaintiff-petitioner filed the suit claiming his title and possession over the suit land. In the said suit the plaintiff-petitioner impleaded only the State of Bihar as a party. The suit was dismissed and thereafter the plaintiff-petitioner has filed the appeal. During the pendency of the appeal, the present sole respondent filed a petition for his impleadment as respondent in the appeal on the ground that the

State of Bihar (already respondent in the appeal) has settled the suit land with him. Learned court below by the impugned order has allowed the prayer after taking into notice the facts and the claim made by the present sole respondent.

Mr.Verma, the learned counsel appearing for the petitioner has submitted that the learned court below has committed error in allowing the prayer of the sole respondent to be impleaded as party. It has been propounded that the suit land has not been settled by the State of Bihar to the present sole respondent, and therefore, he could not have been made a party. The learned counsel has also placed reliance upon the decision in the case of ***Ram Lochan Sharan Vs Sri Balmukund Yadav, (2006)3 BLJR 1715(Pat)*** in support of his contention that the present sole appellant can file independent suit but cannot be impleaded as a party.

The learned counsel for the sole respondent has submitted that the sole respondent can not claim any independent title and his contest in the appeal would be confined only on the basis of the claim which has been and shall be made by the State of Bihar in the suit and appeal as he has derived his title through the same.

After considering the submissions, facts and



circumstances as well as after the perusal of the impugned order, it is manifest that the petitioner has filed the suit claiming his title and possession over the suit land against the State of Bihar. After the dismissal of the suit, the petitioner has filed the appeal. At the appellate stage, the sole respondent has come out with the prayer to be added as party-respondent claiming settlement of the suit land with him by the State-respondent. The learned court below has passed the order impleading the sole respondent as party respondent in the appeal. The submission on behalf of the petitioner that the land has not been settled by the State of Bihar in favour of the sole respondent cannot be decided at this stage and more so because the learned counsel appearing for the sole respondent has categorically submitted that the sole respondent would not claim any independent title over the suit land except as raised by the defendant-respondent State of Bihar in the suit and appeal through which he has derived his title. The reliance by the learned counsel for the petitioner in the case **of Ram Lochan Sharan (Surpa)** is also misplaced as in that case, the claim to be impleaded as party was made on the basis of independent title whereas in the present case, the claim is on the basis of derivative title through a party in the suit. In view of the principles enunciated by the apex court regarding impleadment of party in a



suit, in the case of ***Mumbai International Airport Pvt.Ltd Vs.Regency Convention Centre & Hotels Pvt.Ltd. ,(2010) 7 SCC 417***, the present sole respondent is at least a proper party in the proceeding. Further the submission by the learned counsel for the petitioner that the sole respondent be directed to produce the documents in support of his case of settlement is also not tenable at this stage as that is a question to be decided by the learned court below at appropriate stage.

The learned counsel for the petitioner has also filed an interlocutory application (I.A.No.9442/2015) praying for addition of State of Bihar as respondent in this writ application. It transpires from the record that this writ application was filed in the year 2013 and by order dated 28.01.2013, this Court issued notice to the sole respondent and also stayed the further proceeding of the title appeal. It is also manifest that the State of Bihar was the sole defendant in the suit and sole respondent in the appeal but was not impleaded as party respondent in the writ application nor this fact was brought to the notice of the court while praying for stay of further proceeding in the suit. Therefore, at this stage this Court is not inclined to allow the prayer made on behalf of the petitioner for impleading the State of Bihar as a party as the same will linger the matter further for the reasons directly attributable to the

petitioner. It is, further, also concluded that this writ application suffers from the defect of non-impleadment of a necessary party.

Accordingly, this writ application is dismissed.

(V. Nath, J)

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