

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7571 of 2012

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Narayan Roy & Anr

.... Petitioner/s

Versus

Motilal Jha & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Brij Nandad Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 05-11-2015

Heard the learned counsel for the petitioners and the
learned counsel for the respondents.

This application under Article 227 of the Constitution of India has been filed by the interveners-petitioners against the order dated 14.12.2011 passed by learned Sub Judge I, Banka in Title Suit No.51 of 2009 whereby the court below rejected the prayer of the petitioners for being impleaded as party-defendant in the suit.

It appears that the plaintiffs-respondents filed the suit for declaration of title and confirmation of possession and in the alternative, for recovery of possession making the defendants only as party. These petitioners filed application for being added as party claiming themselves to be the heirs of either the recorded tenant or the heirs of the Sikmidar. In fact, three petitioners filed application. The court below by the impugned order allowed the

prayer of one Manti Devi finding her to be heir of recorded tenant and rejected the prayer of the present petitioners.

The learned counsel for the petitioners submitted that one branch of the interveners-petitioners have been added as party-defendant whereas the petitioners have been left. The learned counsel submitted that in fact, they are the owner of the property and are in possession of the same.

On the contrary, the learned counsel appearing on behalf of the plaintiffs-respondents submitted that in fact, the suit has been filed against the defendants who are objecting the possession of the petitioners and are claiming title over the suit property. So far the defendant's right is concerned, as pleaded by them in the application itself, their claim is that they are the heirs of Sikmidar only.

The Hon'ble Supreme Court in the case of **Kasturi v. Iyyamperumal and others, (2005) 6 Supreme Court Cases 733** interpreted the provision of Order I Rule 10(2) C.P.C. and held as follows:

"from a plain reading of expression "all the questions involved in the suit" used in Order I Rule 10(2) C.P.C. it is abundantly clear that the legislature clearly meant that only the controversies raised as between the parties to the litigation must be gone into, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise

between the plaintiffs or the defendants inter se or questions between the parties to the suit and a third party.”

In the present case, the present petitioners are claiming for being added as defendants on the ground that they are the owner of the property and in possession of the same. So far this case is concerned, the controversy is between the parties and these petitioners are third party to the suit. According to the plaintiffs-respondents they are not the owner nor in possession of the property, therefore, this dispute at the instance of the interveners cannot be decided in the present suit.

So far the controversies between the parties i.e. the plaintiffs-respondents and the defendants of the suit is concerned, that is a matter between the parties which is to be decided and for deciding that controversy, the presence of the petitioners are not at all necessary.

The Hon'ble Supreme Court in the case of **Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and others (2010) 7 Supreme Court Cases 417** has held that “a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a necessary party is not impleaded, the suit itself is liable to be dismissed.” In the present case, it cannot be said that in absence of

the present interveners, the controversies between the parties cannot be decided and adjudicated upon effectively by the Court. At paragraph 24, Point No.3, the Hon'ble Supreme Court further held that "if a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party."

In the present case, therefore, if at all the Court will find subsequently that these interveners are necessary party, the Court is at liberty to proceed according to law but so far the present interveners-petitioners are concerned, the court below has found that they are not necessary party and, therefore, in exercise of jurisdiction under Article 227 of the Constitution of India, the impugned order cannot be interfered with.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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