

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13356 of 2010

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Smt.Maya Devi W/O Dinesh Singh R/O Vill.- Jamurihna, P.S.- Ramgarh,
Distt.- Kaimur

.... Defendant/ Petitioner/s

Versus

Sri Baliram Tiwari S/O Late Rampati Tiwari R/O Vill.- Panserwa, P.S.-
Mohania, Distt.- Kaimur

...Petitioner/Respondent

2. Vakil Tiwari S/O Late Chandrika Tiwari R/O Vill.- Panserwa, P.S.-
Mohania, Distt.- Kaimur

3. Birendra Tiwari S/O Late Chandrika Tiwari R/O Vill.- Panserwa, P.S.-
Mohania, Distt.- Kaimur

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.S. Dwivedi Mr. Rajiv Shankar Dwivedi
For the Respondent no.1		Mr. K.P. Dubey
For respondent no. 2 and 3		Mr Om Prakash Pandey Mr. Satyendra Pandey

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

10 05-08-2015 Heard Mr. S. S. Dwivedi learned Sr. Counsel for the

petitioner, Mr. Dubey for respondent no.1 and Mr. Pandey for

respondent nos. 2 and 3.

The petitioner is the original defendant of Title Suit No.
139 of 2004 which was filed by the deceased-original plaintiff
Radha Pyari Kuer @ Radhika Kuer for setting aside the deed of
gift executed in favour of the defendant-petitioner. In course of
hearing of the said suit two applications, one dated 10.03.2005 by
Wakil Tiwari and another dated 15.03.2005 by Baliram Tiwari
were filed. Both the applications were filed under Order 1, Rule 10



CPC for their addition as party to the suit. Wakil Tiwari by filing application dated 10.03.2005 prayed for being added as defendant, whereas Baliram Tiwari filed an application dated 15.03.2005 for addition as plaintiff no.2. The same was contested by the defendant and after hearing both sides the learned trial court by a well reasoned order dated 27.04.2005 (Annexure-7 to the supplementary affidavit) allowed both the applications. However, in the operative part of the order it was observed that the applicant(s) shall be impleaded as defendants. Subsequently Wakil Tiwari (respondent no.2 herein) filed an application for transposing him from the category of defendant to the category of plaintiff since Baliram Tiwari was allowed to be added as plaintiff no.2. The petitioner filed rejoinder thereto a copy whereof has been enclosed as Annexure-6. The same was considered and rejected by order dated 27.05.2010. Aggrieved thereby, respondent no.2 filed a revision application before this Court vide C.R. No. 833 of 2009. The said revision application was dismissed as withdrawn by order dated 27.01.2010. The petitioner filed two applications in the court below for transposing Baliram Tiwari as defendant in the light of the order dated 27.04.2005. The same was considered by the learned trial court and rejected under order dated 27.05.2010. The trial court also passed order in another

application which was filed and pending consideration. This Court is not concerned with that part of the order. The petitioner is aggrieved by only that part of the order dated 27.05.2010 wherein the application filed by her for transposing Baliram Tiwari as defendant in the light of the order dated 27.04.2005 has been considered and rejected.

Mr. Dwivedi learned counsel for the petitioner submits that the order dated 27.04.2005 allowing Baliram Tiwari to be impleaded as defendant has attained finality. The learned trial court committed an error of record in observing that he was already allowed to be impleaded as plaintiff no.2. This is not borne out from the order dated 27.04.2005.

Per contra, the respondents have contended that two applications, one by Wakil Tiwari dated 10.03.2005 and another by Baliram Tiwari dated 15.03.2005 were filed in the suit. Wakil Tiwari in his application dated 10.03.2005 prayed for being impleaded as defendant whereas Baliram Tiwari in his application dated 15.03.2005 prayed for being impleaded as plaintiff no.2 setting out reasons therefor. The aforesaid applications filed by Baliram Tiwari as well as Wakil Tiwari were contested by the defendant and the court by order dated 27.04.2005 (Annexure-7) allowed both the applications. In other words, the prayers made



therein were allowed. However, inadvertently in the concluding part of the order dated 27.04.2005 respondent no.2 was directed to be impleaded as defendant which is a sheer mistake on the part of the court. Subsequently, Wakil Tiwari made an application for being impleaded as plaintiff since Baliram Tiwari was already allowed as co-plaintiff in the suit. The defendant-petitioner resisted the said application of Wakil Tiwari. The application filed in apposition thereof has been enclosed as Annexure-6 wherein the petitioner defendant accepted that the application dated 15.03.2005 filed by Baliram Tiwari was for being impleaded as co plaintiff which was considered and allowed. The said application filed by Wakil Tiwari was considered and rejected by order dated 22.12.2008 setting out reasons therefor. It has thus been submitted that the mistake being patently obvious cannot be allowed to be perpetrated in exercise of writ jurisdiction of this Court under Article 227 of the Constitution of India.

I have heard the submissions of the parties and perused the materials on record.

Indisputably, two applications were filed under Order 1, rule 10 of the CPC. Baliram Tiwari in his application dated 15.03.2005 had specifically prayed for being added as co plaintiff setting out reasons therefor. The same was allowed on contest by



the petitioner. The trial court in the order dated 27.04.2005 noted that prayer made in the application dated 15.03.2005 is allowed. However, in the concluding part of the said order it has been directed that they be impleaded as defendant. The defendant was in the know of the order. The civil revision application filed by Wakil Tiwari was permitted to be withdrawn by this Court. In other words, the Court accepted the fact that the prayer made in the application dated 15.03.2005 was considered and allowed whereby Baliram Tiwari was required to be added as co plaintiff. To verify the fact, the records of the suit were called for perusal. The application dated 15.03.2005 specifically prays for impleadment as plaintiff no.2 setting out reasons therefor. The question is whether such mistake which the court committed in the order dated 27.04.2005 could be allowed to be perpetrated particularly when the parties to the suit understood well that the application dated 15.03.2005 specifically praying for impleadment as co plaintiff was allowed on contest. It has been brought to the notice of the Court that original plaintiff has already died. Now it is the co plaintiff who is pursuing the suit. A lis is required to be adjudicated on merit and not in the manner the petitioner defendants want taking shelter behind an obvious mistake of the court.

Taking into account the aforesaid facts, in my view, the power of superintendence vested in this Court under Article 227 of the Constitution of India cannot be invoked. The application is dismissed.

Since the suit is of the year 2004, it is expected the court below will expedite the hearing of the mater and the parties will cooperate with the court below in doing so.

Let the records be sent back to the court below forthwith.

(Kishore Kumar Mandal, J)

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