

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1899 of 2015

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Sri Ram Bhushan Jha & Anr

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra

For the Respondent/s : Mr. Sc13- Arvind Kumar No. 1

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 01-12-2015 Heard the learned counsel, Mr. Arun Kumar for the petitioners and the learned counsel, Mr. Mahendra Prasad Verma, A.C. to S.C.13 for the State and State Authorities on I.A. No.6758 of 2015. At the time of hearing of this I.A. which has been filed for stay of operation of the impugned order, the learned counsel for both the parties submitted that the writ application may also be heard on merit in admission matter. Accordingly, I heard the parties on merit in admission matter.

This application under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners against the order dated 08.12.2014 passed by learned Sub Judge I, Benipur, Darbhanga in Title Suit No.21 of 1997 whereby the court below allowed the application filed by the respondent No.8 under Order I Rule 10 C.P.C. for being added as party-defendant in the suit.

The learned counsel for the petitioners submitted that the



evidence of the plaintiff has already been closed and in fact, the petitioners have filed the suit for declaration that the suit property belonged to the State of Bihar and is used by the public at large but the defendant No.3 in collusion with the State Authorities has got it settled in his name. At this stage, if the order is allowed to stand then the plaintiff-petitioner shall suffer serious loss and moreover, in fact, the defendant No.3 set up his brother who is defendant No.8 for filing this application and, therefore, the intention is only to delay the matter.

Perused the order passed by the court below. The application filed by the respondent No.8 under Order I Rule 10 C.P.C. is Annexure 1 to this writ application. The intervener claimed that in fact, the suit land is settled by the ex-landlord in the name of his father and after death of his father, he has got interest in the property equal to that of the other co-sharer but the plaintiffs have not made him party. The court below found that in view of the claim made by the intervener, he is a necessary party and, therefore, the application has been allowed.

It is settled principles of law that for deciding as to whether a person is a necessary party or not two tests are to be satisfied for determining the question. The first one is there must be a right to some relief against such party in respect of the



controversies involved in the proceedings and secondly, no effective decree can be passed in the absence of such party. In the present case, the intervener is claiming that he has a right in the suit property. The plaintiffs-petitioners are not praying for any relief for declaration of title to the suit property. Their claim is that the suit property is the public property. On the other hand, the defendant No.3 as well as the intervener both are claiming title in the suit property. In such circumstances, the controversies between the parties can effectively decided only in presence of the intervener and if he is not added as party, no effective decree can be passed in his absence. Therefore, the court below found that the intervener is a necessary party.

Now, it is settled principles of law that the provision as contained in Order I Rule 10(2) C.P.C. speaks about the jurisdiction of the court. The general rule in regard to impleadment of parties is that the plaintiff in a suit being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wish of the plaintiff but that general rule is subject to the provision of Order I Rule 10(2) C.P.C. by which the court is given the discretion to add a party, any person who is

found to be a necessary party or proper party. In this connection, reference may be made to the decision of 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**. In the present case, as stated above, the court below found that the intervener is claiming title and interest in the suit property, therefore, he is necessary party.

In such circumstances, when the court below has exercised a discretionary jurisdiction, in my opinion, the impugned order cannot be interfered with in supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, this writ application is dismissed. Consequently, the I.A. is also rejected.

(Mungeshwar Sahoo, J)

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