

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16679 of 2012

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1. PARMESHWAR YADAV
 2. GOBIND PRASAD YADAV
 3. JAGDISH PRASAD YADAV.

ALL ARE SONS OF LATE CHAMAN YADAV RESIDENT OF
VILLAGE - PANCHU HISUA, P.S. & ANCHAL - HISUA, DISTRICT
- NAWADA.

.... PETITIONER/S

VERSUS

1. BAIJNATH PRASAD S/O LATE BAMAN MAHTO
2. RAM PRASAD YADAV S/O LATE BIHARI MAHTO
3. BASUDEO PRASAD S/O LATE GURUDAYAL MAHTO
4. SURESH PRASAD
5. ARBIND PRASAD
6. NARESH PRASAD

ALL ARE SONS OF LATE GANGA PRASAD RESIDENT OF
VILLAGE - PANCHU HISUA, P.S. & ANCHAL - HISUA, DISTRICT
- NAWADA.

7. THE STATE OF BIHAR THROUGH THE COLLECTOR, NAWADA
8. THE ANCHAL ADHIKARI, ANCHAL - HISUA, P.S. - HISUA,
DISTRICT - NAWADA
9. DAYA NAND PRASAD
10. SADANAND PRASAD
11. SHAHSI KUMAR SON OF LATE LAKHAN RAUT.
12. MANJU DEVI
13. PUSHPA
14. BIBHA
15. BABITA

ALL ARE DAUGHTERS OF LATE LAKHAN RAUT

16. BHARATI DEVI W/O LATE LAKHAN RAUT
- ALL ARE RESIDENTS OF VILLAGE - PANCHU HISUA, P.S. -
HISUA, DISTRICT - NAWADA

.... RESPONDENT/S

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Appearance:

For the Petitioner/s	:	Mr. S.S. Dwivedi, Sr. Adv. Mr. Rakesh Chandra, Adv. Mr. R.K. Dubey, Adv. Mrs. Sangeeta Sharma, Adv. Mr. Parth Gaura, Adv.
For the Respondent/s	:	Mr. Arvind Kumar Sinha, Adv.
For the State	:	Mr. Krishna Kumar Singh, AC to G.P.-17.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

8 14-12-2015

Heard learned counsel for the petitioners as well as learned counsel for the respondents.

Instant suit has been brought up by the petitioners wherein relief has been sought for against the State on account of wrong survey entry to the extent of RSP No.783 and 784 arising out of CSP No.226. While the suit was sailing respondents/ intervener filed petition on 09-01-2012 claiming themselves to be a necessary party and under guise of Order-I Rule-10 of the CPC prayed for their impleadment as defendant which, the learned lower court allowed by the order impugned dated 04-05-2012 hence this petition.

Learned counsel for the petitioners submits that the order impugned is bad on two counts. The first one there happens to be disclosure at the end of intervener/respondent that certain area of his land has amalgamated with RSP No.783 and 784, which cannot be adjudicated upon in present suit and further, they have not pleaded that the survey entry having recorded in the name of State of Bihar is wrong. It has also been submitted that relief relating to confirmation of possession over disputed land will be analogical to relief no.1 and further, that will not bar intervener/respondents to have fresh round of litigation against the petitioner as well as State of Bihar on account of wrong survey

entry. Therefore, the order impugned happens to be bad.

At the other end the learned counsel for the respondents has submitted that because of the fact that confirmation of possession has been also sought for that will axe upon his interest and on account thereof, he happens to be a necessary party. As such, allowing the same by the learned lower court is just, legal and proper.

Application of Order-I Rule-10 always raised upon perception of the court inconsonance with the lis and in the aforesaid background, if the court thinks that lis could not be properly adjudicated upon without having presence of particular party, that party happens to be the necessary party whereupon the court is quite competent to impleadment. From the plaint, it is apparent that petitioner has claimed for correction of wrong survey entry having in name of State of Bihar relating to RSP No.783, 784 and that part of prayer happens to be unanswered at the end of the intervener/respondents. Therefore, it is apparent that even if his claims relating to having certain area of his land amalgamated with Survey Plot No.783 as well as 784, then in that event, he would have a grievance against the State of Bihar and further a declaratory suit should have been filed on his behalf, like the present one relating to the proportion of the area which has been

amalgamated in Survey Plot No.783, 784 having recorded in the State of Bihar. By having arrayed as an defendant in terms of Order-I Rule-10 of the CPC will not find favour for adjudication of aforesaid controversy as pointed out above and for that, the intervener/respondents is directed to have a separate suit and for that, a liberty is available there.

With the aforesaid direction the order impugned is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J.)

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