

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13613 of 2013

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1. Goddess Sri Devi Bhu Devi And Bardaraj Bhagwan'S Temple Situated At Village Pakari, P.O. And P.S. Rajpur, District Rohtas Through Its Sawait And Mahanth Swami Raghunathchari, Chela Of Late Dewkirhanachari Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas

.... Petitioner/s

Versus

1. The State Of Bihar Through Collector, Rohtas At Sasaram, P.O. And P.S. Sasaram, District Rohtas
2. The Anchalladhikari, Rajpur, P.O And Rajpur, District Rohtas
3. Mukhiya Smt. Sandhya Devi, Gram Panchayat, Barana, Anchal - Rajpur, P.O. And P.S. Rajpur, District Rohtas
4. Santosh Tiwary Son Of Nand Kishore Tiwary Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas
5. Radheshyam Tiwary Son Of Late Tilokdhari Tiwary Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas
6. Rajaram Tiwary Son Of Late Murlidhar Tiwary Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas
7. Bijendra Tiwary Son Of Late Bikramaditya Tiwary Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas
8. Maya Kuer Widow Of Late Shriman Narayan Tiwary Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas
9. Vidyawati Kuer Widow Of Late Ramakant Tiwary Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas
10. Hareram Tiwary Son Of Ram Rahash Tiwary Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas
11. Kamla Tiwary Son Of Late Paramhansh Tiwary Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas
12. Mahendra Tiwary Son Of Late Shri Ram Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas
13. Manoranjan Tiwary Son Of Lakshmi Narayan Tiwary Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas
14. Brajesh Tiwary Son Of Bishwanath Tiwary Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas
15. Ravi Kant Tiwary Son Of Surya Kant Tiwary Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas
16. Sarvindra Tiwary Son Of Late Paramhansh Tiwary Resident Of Village - Pakari, P.O. And P.S. Rajpur, District - Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s :Mr. Akhouri Vipin Bihari Shrivastava, Advocate
For the Respondent/s :AC to GP-24

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

learned AC to GP 24.

2. Gone through the order impugned dated 24.05.2013 passed by Sub-Judge-7, Rohtas at Sasaram in Title Suit No. 642/2008 whereby and whereunder the learned lower court had allowed the prayer of the remaining respondents/ Intervener-defendant in terms of provision as enumerated under Order-I Rule 10 (2) of the CPC on a petition dated 17.09.2012.

3. Having been aggrieved by the entry being made in the Revisional Survey Khatian, petitioner/plaintiff though had not pleaded that entry so made relating to Revisional Survey Khatian be declared not binding upon the plaintiff, had sought for a relief for declaration of right, title and interest of the plaintiff relating to suit land along with other ancillary reliefs wherein the plaintiff had arrayed the State of Bihar, only defendant. Subsequently thereof, as is evident the Court had exercised its power in terms of Order I Rule 8(A) of the CPC which the plaintiff complied with.

4. Subsequently thereof, Respondents No.4 to 16 have appeared and filed petition under the banner of Order I Rule 10(2) of the CPC which has been allowed by the learned lower court under the order impugned whereupon the instant petition has been filed.



5. It has been submitted on behalf of petitioner that those Respondents/Intervener-defendant filed their petition in their individual capacity as well as representative capacity on the ground that some portion of the land is being used as source of ingress and outgress of the villagers while some portion of the disputed land is being used as drainage and for that, they would have filed a separate suit in the background of the fact that the land under dispute is being exclusively claimed by the plaintiff on the basis of deed of *Samarpana* having been effected in the year 1917 by the Ex-Landlord. The land happens to be under their physical possession. That being so, the status of Respondents/intervener-defendant could not have been recognized by the learned lower court and instead thereof, would have directed the Respondents/intervener-defendant to file a separate suit after getting permission as required under Order 1 Rule 8(2) of the CPC (representative capacity) so the order impugned is bad and fit to be set aside.

6. Learned AC to GP-24 has objected the prayer and submitted that the prayer of the petitioner is not entertainable in the background of the fact that the ambit and scope of Order I Rule 10(2) of the CPC is not only for deciding the issue in its finality rather is also to avoid multiplicity of the suit after

identifying status of the petitioners being necessary party for the said purpose.

7. After hearing the parties as well as after going through the order impugned, it is evident that petitioner/plaintiff had not objected at an earlier occasion with regard to the direction having been at the end of the Court for compliance of the requirement as laid down under Order I Rule 8 (A) of the CPC. On the other hand, petitioner/plaintiff complied with the same whereupon anybody else has got an access in the proceeding whereupon presence of Respondent/intervener defendant visualized whereupon, allowing them to be recognized in terms thereof, is found in accordance with law. As such, the prayer of the petitioner is found non entertainable and on account thereof, the instant petition stands rejected.

(Aditya Kumar Trivedi, J)

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