

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3386 of 2013

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1. Kaushalasya Kunwar @ Kaushalaya Devi W/O Late Janardan Pandey
 Resident Of Village - Basahi Tola Shambhu, Chapra, P.S. - Janata Bazar,
 District – Saran.

.... Petitioner/s

Versus

1. Rojaddin Mian Son Of Wakil Mian Resident Of Village Shambhu
 Chapra, Police Station Bainapur Hal Janata Bazar, District - Saran
 2. Alisher Mian Son Of Wakil Mian Resident Of Village Shambhu Chapra,
 Police Station Bainapur Hal Janata Bazar, District - Saran
 3. Sultan Mian Son Of Rojaddin Mian Resident Of Village Shambhu
 Chapra, Police Station Bainapur Hal Janata Bazar, District - Saran
 4. Habib Mian Son Of Rojaddin Mian Resident Of Village Shambhu
 Chapra, Police Station Bainapur Hal Janata Bazar, District - Saran
 5. Sarfuddin Mian Son Of Alisher Mian Resident Of Village Shambhu
 Chapra, Police Station Bainapur Hal Janata Bazar, District - Saran

.... Respondent/s

with

Civil Writ Jurisdiction Case No.12438 of 2012

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1. Adalat Mian S/O Bipat Mian Resident Of Village- Shambhu Chapra, P.S-
 Baniapur Hal Janata Bazar, District- Saran.

.... Petitioner/s

Versus

1. Khatijan Khatoon W/o Late Rojaddin Mian Resident Of Village-
 Shambhu Chapra, P.S- Baniapur Hata Janata Bazar, District- Saran.
 2. Niyazan Bibi W/o Rasid Mian of village- Sanduar, Post- Binda Lal Ka
 Rampur, P.S.- Ekma, District- Saran
 3. Maida Khatoon W/o Meraj MIyan, Village- Chokari, Rasulpur, P.O.-
 Rasulpur, P.S.- Daraunda, District- Siwan
 4. Alisher Mian S/O Wakil Mian Resident Of Village- Shambhu Chapra,
 P.S- Baniapur Hal Janata Bazar, District- Saran.
 5. Sultan Mian S/O Rajaddin Mian Resident Of Village- Shambhu Chapra,
 P.S- Baniapur Hal Janata Bazar, District- Saran.
 6. Habib Mian S/O Rojaddin Mian Resident Of Village- Shambhu Chapra,
 P.S- Baniapur Hal Janata Bazar, District- Saran.
 7. Sarfuddin Mian S/O Alisher Mian Resident Of Village- Shambhu
 Chapra, P.S- Baniapur Hal Janata Bazar, District- Saran.

.... Respondent/s

Appearance :

(In CWJC No.3386 of 2013)

For the Petitioner/s : Mr. Dharmesh Kumar, Advocate

For the Respondent/s : Mr. Bashishtha Nr. Mithra, Advocate

(In CWJC No.12438 of 2012)

For the Petitioner/s : Mr. Dharmesh Kumar

For the Respondent/s : Mr. B. K. Mithra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

12438/2012 have been analogously heard and are being disposed of by a common order as, in both these petitions common question of law has been raised as well as, respondents are common at the admission stage itself with the consent of learned respective counsels.

2. CWJC No. 12438/2012 has arisen against order dated 29.11.2011 passed by 10th Additional Munsif, Saran at Chapra in Title Suit No. 20/93 whereby and whereunder a prayer made on behalf of petitioner/plaintiff to implead the State of Bihar as defendant has been rejected.

3. In CWJC No. 3386/2013, the order dated 29.11.2011 passed by Musif-3rd, Saran at Chapra in connection with Title Suit No. 38/91 is under challenge whereby and whereunder the learned lower court declined to acceded to the prayer of the plaintiff to implead the State of Bihar as a party.

4. Both the Title Suits as is evident, though, drawn up by two different plaintiff but against common defendant on account of *Parcha* having been granted in their favour by the State of Bihar through Collector under Bihar Privileged Persons Homestead Tenancy Act. Furthermore, it is apparent from the order impugned that in both the Title Suits evidence on behalf of respective parties have already been concluded and the same was running for argument.

5. From the order impugned, it is also evident that

petition was filed in both the suits in the year 2007 and the same has been decided after consuming precious four years and for that there happens to be no explanation at the end of learned lower court as to why the petition was not heard and disposed of at an earliest.

6. From Annexure-1 of CWJC No. 12438/2012 as well as that of CWJC No. 3386/2013, it is apparent that petitioners have made prayer for impleading the State of Bihar as a party in the background of judicial pronouncement so reported under ***AIR 2007 SC 1499***. But from the order impugned of both the petitions, it is apparent that the learned lower court did not care to see whether there was genuineness at the end of petitioner/plaintiff in having such initiatives.

7. The learned counsel for the petitioners has submitted that at an earlier occasion, since before the principle laid down by the Hon'ble Apex Court in the case of ***Mehar Chand Das v. Lal Babu Siddiqui and Ors AIR 2007 SC 1499***, there was no obligation on the part of the plaintiff to implead State of Bihar through the Collector as a party and on account thereof, he was not at all made a party. Subsequently, it has been held that the State of Bihar through Collector happens to be a necessary party and further, suit would fail in case the State of Bihar through the Collector is not brought up on record.

8. Fortunately, both the suits are alive, on account

thereof, prayer has been made to implead which has been rejected by the learned lower court overlooking the principle laid down by the Hon'ble Apex Court in the case of *Mehar Chand Das v. Lal Babu Siddiqui and Ors* (supra).

9. On the other hand, learned counsel for the respondents has submitted that though under order I Rule 10 of the CPC, the Court is quite competent to direct for impleadment of a party but that should not be exercised in arbitrary manner, more particularly, so far as these two suits are concerned, are pending for argument and if allowed, will pull the suit to initial stage causing uncalled for hardship. Furthermore, it has been submitted that suit is to be framed at the instance of plaintiff and in likewise manner, identification of proper party is also to be at the end of plaintiff. Once the plaintiff had opted for impleading only the respondents and not the State of Bihar, then in that event, subsequent prayer made on behalf of plaintiff in order to sterile the deficiency persisting on the record going to the root of the suit over its maintainability should not be allowed.

10. It has also been submitted that in the aforesaid decision, it has been pointed out that the Collector happens to be the necessary party which, the plaintiff should have conceived while launching the suit and not subsequently. Therefore, suit is suffering from inherent defect whereupon, the prayer of the petitioners is found non tenable.

11. Admittedly, as indicated above, both the suits are pending for hearing argument. It is needless to say that in paragraph-13 of **Mehar Chand Das's** Case (Supra), it has been held as follows:-

Apart from the fact that in such a suit the plaintiff was bound to establish fraud or want of jurisdiction on the part of the Collector, to grant a Parcha in favour of the tenant, the Collector was necessary party. In absence of the Collector, therefore, the suit could not have been decreed.

12. From perusal of the same, it is apparent that the Hon'ble Apex Court had reiterated presence of the Collector to be a necessary party because of the fact that the suit, under the garb of Section 18 of the Bihar Privileged Persons Homestead Tenancy Act, is to be proceeded only on the basis of fraud as well as lack of jurisdiction whereupon, the Collector is expected to explain as the Collector is the competent authority to issue *Parcha*.

13. Because of the fact that event of grant of *Parcha* has been challenged on account thereof, the Collector at an earlier occasion should have been perceived by the plaintiff as a necessary party wherein he failed. Mis-joinder/non-joinder is a theme which adversely affect upon the fate of the suit including, in case so directed to be rectified, limitation will also come into play. Therefore, the learned lower court apart from having serious consideration over **Mehar Chand Das's** (supra) should have also considered on those aspects. Although, applicability of Section 80

of the C.P.C. was taken into consideration.

14. That being so, the respective orders relating to respective suits are set aside. Both the petitions are allowed.

15. The matter is remitted back to the learned lower court to hear afresh giving an opportunity to the respective parties and decide the issue in accordance with law within three months from the date of presentation/receipt of the instant order.

(Aditya Kumar Trivedi, J)

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