

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17552 of 2010

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1. (i). Smt. Renu Bala Sinha Wife of Late Arvind Kumar Sinha
(ii) Amit Ranjan Son of Late Arvind Kumar Sinha
(iii) Arpana Hansraj Daughter of Late Arvind Kumar Sinha All are resident of Chhatauni Amar, P.S.- Chhatauni, P.O.- Motihari, Distt.- East Champaran
 2. Mukul Kumar Sinha S/O Late Bageshwari Prasad R/O Vill.- Chhatauni Amar, P.S.- Chhatauni, P.O.- Motihari, Distt.- East Champaran
 3. Smt. Meera Sinha W/O Late Avinash Kishore Sinha R/O Vill.- Chhatauni Amar, P.S.- Chhatauni, P.O.- Motihari, Distt.- East Champaran
 4. Anivesh Kumar Sinha S/O Late Avinash Kishore Sinha R/O Vill.- Chhatauni Amar, P.S.- Chhatauni, P.O.- Motihari, Distt.- East Champaran
 5. Abhijeet Kumar Sinha S/O Late Avinash Kishore Sinha R/O Vill.- Chhatauni Amar, P.S.- Chhatauni, P.O.- Motihari, Distt.- East Champaran
 6. Abhinay Kishore Sinha S/O Late Avinash Kishore Sinha R/O Vill.- Chhatauni Amar, P.S.- Chhatauni, P.O.- Motihari, Distt.- East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar Through Collector East Champaran, P.O. And P.S.- Motihari, Distt.- East Champaran
2. The Circle Officer Motihari Sadar, P.O.- Motihari, P.S.- Chhatauni, Distt.- East Champaran
3. Bettiah Estate Through Manager Bettiah Estate At Bettiah, P.O. & P.S.- Bettiah, Distt.- West Champaran

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 18780 of 2010

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1. Mukul Kumar Sinha S/o Late Bageshwari Prasad R/o Vill.- Chhatauni Amar, P.S.- Chhatauni, Distt.- East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar through The Collector East Champaran, P.O. & P.S.- Motihari, Distt.- East Champaran
2. The Anchal Adhikari, Motihari Anchal At, P.O. And P.S.- Motihari, Distt.- East Champaran
3. Bettiah Estate Through Manager Bettiah Estate At Bettiah, P.O. And P.S.- Bettiah, Distt.- West Champaran

.... Respondent/s

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Appearance :

(In CWJC No. 17552 of 2010)

For the Petitioner/s : Mr. Dhruv Narayan, Sr. Advocate.

For the Respondent/s : Mr. Binod Kumar.

(In CWJC No. 18780 of 2010)

For the Petitioner/s : Mr. Dhruv Narayan, Sr. Advocate.

For the Respondent/s : Mr. Mr. Abbas Haider

Mr. Binod Kumar.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 10-02-2016

Both the writ applications have been filed by the plaintiff(s) of two suits and raise common issue, inasmuch as by an identical order, the application(s) filed by the respondent Bettiah Estate through Manager for his impleadment as defendant in the suit(s) was allowed by the Trial Court. With the consent of the parties, both the applications have been heard together and are being disposed of.

Facts necessary for disposal of the case shall be noticed from C.W.J.C. No. 17552 of 2010. The plaintiff(s) of Title Suit no. 330 of 2000 have filed the application to assail the order dated 12.08.2009 by which the learned Sub-Judge-IV, Motihari, allowed the application filed under order 1 Rule 10 of the Code of Civil Procedure (for short CPC) read with Section 151 of CPC filed by the respondent Bettiah Estate. The suit was filed by the plaintiff for declaring the plaintiff(s) title and possession over the suit land, detailed in Schedule-1 and to pass a decree for recovery of possession. Analogous prayer for a decree of mesne profit was also made. According to the plaintiffs the subject suit land was settled by the Bettiah Estate with the ancestor of the plaintiffs in the year 1949, which includes the guest house constructed by the Bettiah Estate on a monthly rent of Rs. 50/-. Adjacent to the house settled with the plaintiffs' ancestor, there was Gair Majarua land of Bettiah Estate in Village Chatauni bearing plot no. 1179 under Khata no. 11 measuring total area of 5 acre 38 decimal. On part of the aforesaid lands Women Teachers Training College existed, which ultimately vested in the Government of Bihar. On the rest land of the plot no. 1179 measuring 4.43 acres, several trees were standing. Ancestor of the plaintiffs cleaned the area and brought the same under his

cultivation, inasmuch as the Bettiah Estate fixed rent for the same. The ancestor of the plaintiffs late Bageshwari Prasad filed application for settlement of suitable government land for agriculture purposes. After vesting of Zamindari Rights in the State of Bihar, he applied for fixation of rent with respect to the said land which includes plot no. 1179, but no order was passed. There was, however, a recommendation for settlement of plot no. 1179 in favour of the ancestor of the plaintiff. The said matter ultimately travelled to this Court, and an order was passed in C.W.J.C. No. 1390 of 1970, wherein ancestor of the petitioner intervened on the strength of his cultivating possession over plot no. 1179. In the mean time, the respondent Bettiah Raj being the ex-landlord approached the Collector for fixation of rent of the land of plot no. 1179 claiming it as Bakast and Belagan land of the ex-landlord. The said claim was rejected by the Circle Officer as well as the Appellate Court. The respondent Bettiah Raj filed C.W.J.C. No. 1390 of 1970 in this Court which was allowed by order dated 22.1.1973. In compliance of the aforesaid order, the Circle Officer started fresh proceeding with respect to the subject land, wherein the decision was made in favour of the ancestor of the plaintiff. Again a rent case was got initiated against the ancestor of the plaintiff which remained pending. In the mean time, the ancestor of the plaintiff made efforts to get the subject land settled, which was rejected by the DCLR with respect to plot no. 1179. The same was appealed against, which was also rejected. The plaintiff claimed the subject land recorded in Khatian as Gair Mazarua Malik. Land of plot no. 1178 was later settled by the State Government in favour of the plaintiff, whereafter the plaintiffs or their ancestor amalgamated land of plot no. 1179 with the said land and claimed to be in continued possession thereof. Since obstruction was later made in harvesting the crop of land plot no. 1179, another litigation ensued. The plaintiffs were forcibly



dispossessed from the suit land, leading to the filing of the suit. An application was filed by the respondent-Bettiah Raj for impleadment as defendant in the said suit stating that the subject land (plot no. 1179) is the Bakast land of Bettiah Estate and the same did not vest in the State of Bihar. It remained in the possession of the Bettiah Raj where a building was constructed in which the school was running. Part of the land was later settled with the eligible persons for which the compensation was paid to the Bettiah Estate. There is a guest house constructed on the subject land by the Bettiah Estate, which was taken on rent by the ancestor of the plaintiffs. The ancestor of the plaintiffs later defaulted in payment of rent, for which a case was instituted which was decreed in favour of Bettiah Estate. The execution matter thereof is pending in the Court. On a consideration of the materials on record and after hearing the parties, the learned Trial Court under the impugned order allowed the said application, holding that the applicant/respondent Bettiah Raj was a proper party to the suit and the presence of the said party shall help in effectively and completely resolving the dispute.

I have heard Mr. Dhruv Narain for the petitioner(s) as well as Mr. Binod Kumar who appeared for the respondent Bettiah Estate.

The contention of the petitioner(s) is that the plaintiff has the *dominus litis*. They cannot be forced to fight litigation against a party, against whom no relief has been prayed. The learned Trial Court acted with material irregularity in allowing the application of the respondent Bettiah Estate. It has been pointed out that the respondent Bettiah Raj had earlier filed a suit against the State of Bihar in the year 1991 vide T.S. No. 232 of 1991 for a declaration that the subject land/suit land being the Bakast land of the Bettiah Raj did not vest in the State of Bihar which was pending. The aforesaid fact was not disclosed in the application. At best, the

respondent Bettiah Estate could have prayed for hearing both the suits analogously. In support of the contention he relied on (2010) 7 SCC 417, [*Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Others*].

Conversely, the Counsel for the respondent-Bettiah Raj supported the impugned order. He drew attention of the Court to various pleadings made in the counter affidavit in order to impress the Court that the claim of the ancestor of the plaintiff over the suit land was negated on various occasions, by the counsel for the State. In particular, he has drawn attention to the Court to the order dated 02.01.1973 passed in C.W.J.C. No. 1390 of 1970, wherein the order(s) passed by the Collector under the Land Reforms Act dated 28th March, 1961 was challenged. It is submitted the ancestor of the petitioner/plaintiff filed an application for impleadment in the said case which was rejected. The writ application was allowed and the order passed by the Circle Officer in respect of plot nos. 1178, 1179 and others was declared as illegal. The appellate court order was also set aside. A liberty was, however, granted to initiate a fresh proceeding in support of the aforesaid five plots including plot no. 1179. On the strength of those pleadings, it has been strenuously argued that the Bettiah Estate is a party in the suit for effective and complete resolution of the dispute. He has also relied on *Mumbai International Airport Private Limited (Supra)*.

The case of the plaintiff set out in the plaint has been noticed in some considerable detail only to highlight that litigation between the plaintiff and the respondent-Bettiah Estate in respect of the suit land was going on from before. In nutshell, the case of the plaintiff(s) is that they continued in possession of the subject land, which was a Gair Majarua land, which upon abolish of Zamindari Rights vested in the State of Bihar. The respondent-State forcibly

dispossessed the plaintiff, whereas the case of the respondent Bettiah Estate is that the subject land was the Bakast land of the zamindar (Bettiah Estate) where on the guest house of the Bettiah Raj as well as of Mahila Training College was constructed, which have not vested in the State of Bihar. The ancestor of the plaintiff was treated as a tenant in the guest house and for realization of rent thereof, a litigation was filed against the ancestor of the plaintiff by Bettiah Raj which was decreed. It may be necessary for the Court while dealing with the suit filed by the plaintiff to examine as to whether the land belongs to the State of Bihar upon vesting as also whether the plaintiff had any title over it to continue in possession thereof in their own right. Presence of the respondent Bettiah Estate in the suit may help the Court in resolving the dispute.

This aspect of the matter was succinctly dealt with by the Hon'ble Apex Court in ***Mumbai International Airport Private Limited(Supra) in the following manner:-***

“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 wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:.

“10.(2) Court may strike out or add parties.- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who

ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

Considering further the scope and ambit of Order 1 Rule 10 of the CPC, the Hon'ble Apex Court in paragraph 14 of the said report observed that the Court may at any stage of the proceedings (including suits for specific performance) either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the Court may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle the questions involved in the suit.

Seen thus, a discretion is bestowed on the Court hearing the suit to add as a party, any person who is considered a necessary party or proper party. The term necessary party is to be judged in the light of the particular facts of the case. In the case at hand, the Trial Court having regard to the pleadings made in the plaint and the statements made in the application filed by the respondent-Bettiah Raj came to the conclusion, for which reasons have also been assigned that the presence of the applicant Bettiah Estate in the suit shall help in effective and complete resolution of the dispute involved in the suit, although apparently no relief is sought against such party. Such discretion is bestowed on the Trial Court who is aware of the respective claims or pleadings of the parties and the same having been invoked, it would be inappropriate for the writ court to interfere therewith unless it is shown to be patently illegal or perverse. No such perversity in the order has been shown to the

Court except the submission that the plaintiff shall have *dominus litis* in the matter of arraying the parties to the suit. There is no quarrel to the proposition but the Court is required to consider the intent of Order 1 Rule 10 of CPC.

The Hon'ble Apex Court in *Mumbai International Airport Private Limited (supra)*, clarified the position in law. A discretion in this regard, is conferred on the Trial Court before whom all materials/pleadings are placed. As noticed above, on the strength of various orders, the respondent-Bettiah Estate has not only claimed title but also possession over the subject land through court of wards. In this background, the order passed by the Trial Court appears to be an order passed within the bounds of the jurisdiction of the Court.

In view of the discussions made above, I am unable to find merit in the writ applications which are accordingly dismissed. As the suit is pending on the file of the Trial Court since 2000, it is desirable the Trial Court shall proceed to dispose of the suit expeditiously.

(Kishore Kumar Mandal, J)

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