

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14318 of 2010

Baldyanath Mallick S/O Late Mahabir Mallick R/O Vill.- Mohinam Patti, Bahera Bazar, P.S. Bahera, Distt.- Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar through Its Collector-Cum-District Magistrate, Darbhanga
2. Circle Officer, Bahera Block, P.S. Bahera, Distt.- Darbhanga
3. Sub-Judge-I, Benipur, Darbhanga
4. Addl. Collector, Land Reforms, Benipur, Darbhanga
5. Deputy Secretary, Bihar Legislative Assembly, Bihar, Patna
6. District Education Superintendent-Cum-District Work Co-Coordinator Bihar Education Project
7. Smt. Bhagwania Devi W/O Late Nooja Mahto R/O Vill.- Mohinam Patti, Bahera Bazar, P.S. Bahera, Distt.- Darbhanga

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. MD.SHAHNAWAZ ALI
For respondent no. 7 Mr. Sameer Ranjan
For the State Mr. Sanjay Prasad, AC to AAG 6

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 30-06-2016

Heard the counsel for the petitioner, Mr. Sameer Ranjan for respondent no.7 (plaintiff of the suit) and the counsel for the State.

A suit was filed by the plaintiff (respondent no.7) for declaration of her title in respect of the land measuring an area of 03 khata and 8 ½ dhur. A school is running on the said land. There was certain suppression of facts in the plaint. Considering the same, the petitioner representing the school made an application for intervention in the suit. The same was contested by the plaintiff. Vide a proceeding dated 16.12.2009, the learned trial court allowed the said application.

Subsequently, the plaintiff sought withdrawal of the suit itself. However, the intervenor-defendant (writ petitioner) filed an application dated

14.01.2010 under Order 1 Rule 10 of the Code of Civil Procedure (CPC) for transposing him in the category of the plaintiff as the original plaintiff (respondent no.7) wanted to withdraw/abandon the suit. After hearing both sides, the learned trial court, by an order dated 03.08.2010, rejected the said application and at the request of the plaintiff dismissed the suit. Against this order, the writ petition has been filed.

Indisputably, the writ petitioner filed another suit vide T.S. No. 62 of 2010 seeking declaration of title of the plaintiff over the land in question in which, it is stated, the plaintiff of T.S. No. 105 of 2008 (respondent no.7 herein) has also been impleaded as defendant.

Learned counsel for the petitioner submits that the learned trial court committed a serious error in allowing the suit to be dismissed of course on the application filed by the plaintiff (respondent no.8). Considering the fact that the petitioner was already impleaded intervenor defendant the application for transposing him in the category of the plaintiff ought to have been allowed.

The counsel for respondent no.7 as well as the State have opposed the application. It is stated that the plaintiff has dominus litus. If she did not want to continue with the suit and had prayed for withdrawal/dismissal thereof the court rightly allowed the said application. The writ petitioner has already filed a suit wherein rights of the parties shall be adjudicated upon. There was no need to continue with the title suit no. 105 of 2008, particularly when the plaintiff herself sought leave of the court to withdraw the same without seeking any further leave to file a fresh one.

On a consideration of rival submissions of the parties, in my view, the learned trial court did not commit any error of jurisdiction or material irregularity in passing the order impugned in the writ application meriting interference. The

rights of the parties shall be decided in the pending suit filed by the petitioner.

The writ application is disposed of.

(Kishore Kumar Mandal, J)

HR/-

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