

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10287 of 2013

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1. Laxmi Devi, wife of Late Kapildeo Prasad Sahu Resident Of Village And P.O. Sahu Parbata, P.S. Parbata, District- Bhagalpur
 2. Awadh Kishore Prasad Sahu @ Awadh Kishore Son Of Late Kapildeo Prasad Sahu Resident Of Village And P.O. Sahu Parbata, P.S. Parbata, District- Bhagalpur
 3. Anant Kumar Sahu Son Of Late Kapildeo Prasad Sahu Resident Of Village And P.O. Sahu Parbata, P.S. Parbata, District- Bhagalpur
 4. Kamal Kishore Sahu Son Of Late Kapildeo Prasad Sahu Resident Of Village And P.O. Sahu Parbata, P.S. Parbata, District- Bhagalpur
 5. Bal Kishore Sahu Son Of Late Kapildeo Prasad Sahu Resident Of Village And P.O. Sahu Parbata, P.S. Parbata, District- Bhagalpur
 6. Vina Devi Daughter Of Late Kapildeo Prasad Sahu Resident Of Village And P.O. Sahu Parbata, P.S. Parbata, District- Bhagalpur
 7. Usha Devi Daughter Of Late Kapildeo Prasad Sahu Resident Of Village And P.O. Sahu Parbata, P.S. Parbata, District- Bhagalpur
 8. Kiran Devi Daughter Of Late Kapildeo Prasad Sahu Resident Of Village And P.O. Sahu Parbata, P.S. Parbata, District- Bhagalpur
 9. Suman Devi Daughter Of Late Kapildeo Prasad Sahu Resident Of Village And P.O. Sahu Parbata, P.S. Parbata, District- Bhagalpur
 10. Lilawati Devi Wife Of Late Nawal Kishore Sahu Resident Of Village And P.O. Sahu Parbata, P.S. Parbata, District- Bhagalpur
 11. Pintu Kumar Sahu Son Of Late Nawal Kishore Sahu Resident Of Village And P.O. Sahu Parbata, P.S. Parbata, District- Bhagalpur
 12. Rakesh Kumar Sahu Son Of Late Nawal Kishore Sahu Resident Of Village And P.O. Sahu Parbata, P.S. Parbata, District- Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar through Collector, Bhagalpur

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Navneet Kumar Tiwari-Advocate
 For the Respondent/s : Mr. Ajay Kumar Rastogi-AAG-10
 Ms. Smriti Singh-AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 28-09-2016

Petitioners/ plaintiffs have prayed for quashing of the
 order dated 18.01.2013 passed by Sri R. Ranjan, Additional Munsif,
 Naugachia in Title Suit No.24 of 1999 whereby and whereunder the

prayer made on behalf of petitioners/ plaintiffs dated 25.05.2012 under Order-I, Rule-10(2) of the C.P.C. has been rejected.

2. Learned counsel for the petitioners/ plaintiffs has submitted that the prayer of the petitioners/ plaintiffs would not have been rejected by the learned lower Court, more particularly on the theme of barred by law of limitation, in the background of the fact that while considering the prayer in terms of Order-I, Rule-10(2) of the C.P.C., the learned lower Court should have considered the status of the person whether happens to be a necessary party coupled with the fact that whether in absence of those persons the dispute could be effectively decided in its finality.

3. Furthermore, it has been submitted that at the stage of filing plaint, petitioners/ plaintiffs could not be able to procure revisional survey khatian and as, there was no reference in the Jamabandi Register regarding those persons whose presence have been shown under remark column of revisional survey khatian, could not know the actual affair and so, mistakenly been not impleaded them as a party.

4. It has also been submitted that mere presence in revisional survey khatian will not be any ground to institute a suit unless and until some sort of infringement is found leading to cause of action which, the plaint is found duly exposed. Furthermore, it has



also been submitted that petitioners/ plaintiffs have asserted that the land happens to be under their physical possession and in the aforesaid background sought for a relief declaratory in nature to the extent of having a declaration that the petitioners/ plaintiffs have got indefeasible occupancy right, title and interest in the suit land described under Schedule-A and B of the plaint and survey entry in the name of State of Bihar is not binding upon the plaintiffs. In the aforesaid background, it has been submitted that in case those persons having their presence in the remark column is not arrayed as a defendant, then in that event, a controversy will arise with regard to propriety of the judgment, in case, the suit is going to be adjudicated in his favour. Therefore, the order impugned is fit to be set aside.

5. Learned A.A.G.-10 has opposed the prayer and submitted that the learned lower Court has rightly dismissed the petition as time barred in the background of the fact that petition has been filed even after 12 years of institution of the suit without any cogent reasonable explanation.

6. Law of Limitation basically deals with two kinds of activities. The first one could be identified as positive or acquisitive or by way of prescription while the other kind is being restrictive. Therefore, as has been concluded by the judicial pronouncement that law of limitation does not extinguish the right which continues to exist

even though the remedy is barred by limitation. Therefore, it is apparent that right survives while remedy ceases to survive.

7. Whenever a prayer is made for addition or deletion of a party, the Court has to perceive the status of the parties to be a necessary party or proper party in consonance with the relief so sought for. During said course, the Court has also to perceive whether in absence of the parties, who are being sought for to be impleaded, could be finally scuttled down in its logical way and that happens to be reason behind that exercise has been thrust upon the Court.

8. The event of necessary, proper party has been considered in *Vidur Impex and Traders Private Limited and others v. Tosh Apartments Private Limited and others with Bhagwati Developers Pvt. Ltd. v. Tosh Apartments Pvt. Ltd. and others reported in A.I.R. 2012 SC 2925* whereunder after discussing the relevant judgments on that very score concluded under Para:-

“36. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of



any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge

about the pending litigation.

6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.”

9. With regard to relevancy of the revisional survey entry and further, applicability of limitation on that very score has been taken into consideration in ***Daya Singh and another v. Gurdev Singh (Dead) by LRS. and others reported in (2010) 2 SCC 194*** wherein, it has been held:-

“14. In support of the contention that the suit was filed within the period of limitation, the learned senior counsel appearing for the plaintiffs/appellants before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned senior

counsel strongly relied on a decision of the Privy Council reported in AIR 1930 PC 270 [Mt. Bolo vs. Mt. Koklan and others]. In this decision their Lordships of the Privy Council observed as follows :(IA p. 331)

"... There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted."

15. *A similar view was reiterated in the case of C. Mohammad Yunus vs. Syed Unnissa and others [AIR 1961 SC 808] in which this Court observed : (AIR p. 810, para 7)*

"7. ... The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right."

In C. Mohammad Yunus (AIR 1961 SC 808), this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed

or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action.”

10. That being so, the order impugned is set aside. Petition is allowed. Keeping the question of limitation open which the learned lower Court will decide along with the suit under separate issue in case so contested.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	09.09.2016
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