

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24515 of 2013

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SHARANGDHAR SINGH SON OF LATE RAMGATI SINGH RESIDENT OF
VILLAGE - BHAWANPURA, POLICE STATION - KHARIK, DISTRICT –
BHAGALPUR.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR, THROUGH COLLECTOR, BHAGALPUR IN THE
DISTRICT – BHAGALPUR.
2. SMT.INDU BALA SINGH WIFE OF SHRI CHANDRA NARAYAN SINGH.
3. SMT. SUBHASHNI SINGH WIFE OF SADA NAND SINGH.

BOTH ARE RESIDENT OF VILLAGE - BHAWANPURA, POLICE
STATION - KHARIK, DISTRICT - BHAGALPUR, AT PRESENT
RESIDENT OF MOHALLA - SIPAHI TOLA, BUXAGHAT ROAD, POLICE
STATION - KOTWALI, DISTRICT – PURNIA.

.... RESPONDENT/S

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Appearance:

For the Petitioner/s : Mr. Waliur Rahman, Adv.
Mr. Rajesh Kumar, Adv.
For the Respondent/s : Mr. Shashi Shekhar Dwivedi, Sr. Adv.
Mr. Ranjan Kumar Dubey, Adv.
For the State : S.D. Yadav, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 02-09-2016

Petitioner /plaintiff has filed instant petition challenging
the order dated 16.07.2013 passed by Sub-Judge-II, Naugachia,
Bhagalpur in Title Suit No.66 of 2011 whereby and whereunder the
learned lower court allowed the petition dated 07.11.2012 purported
to be under Order-I Rule-10(2) of the CPC filed on behalf of
respondent no.2 and 3 (intervener).

2. In order to properly appreciate the grounds taken up by

the respective parties, the facts of the case is to be taken note of.

Asking for a relief that plaintiff has indefeasible right, title and interest over the suit land, confirmation of possession, the revisional survey entry relating to the land under dispute in name of State of Bihar be declared wrong, illegal and not binding upon the plaintiff, defendant be restrained to interfere in peaceful cultivation possession of the plaintiff, cost of the suit, any other relief or relief which the plaintiff is found entitled for and further detailed the suit land under Schedule-A of the plaint and for that, made recital that after separation in the family in the year 1942, father of plaintiff, namely, Ramgati Singh purchased the Schedule-A land in his name vide sale deed dated 25.05.1948 and came over the same and the land is coming under peaceful possession since thereafter. Ramgati Singh got his name mutated in the Shirista of ex-landlord as well as in the State of Bihar. However, during course of revisional operation, the land has been recorded in name of State of Bihar illegally which the plaintiff came to know from Halka Karamchari whom was approached to pay rest and on account thereof, a cause of action has accrued in favour of plaintiff whereupon suit has been filed. On summon, the respondent/defendant State of Bihar appeared, filed W.S. denying the contents, claim of the plaintiff/petitioner as well as justified recording of land under dispute in name of State of Bihar on the ground so enumerated therein. Subsequently thereof, issues, were settled and then thereafter, four witnesses have been examined on



behalf of plaintiff. During midst thereof, the respondent no.2 and 3 who are cousin sisters of petitioner/plaintiff, daughter of Shashi Nath Singh one of the brother of father of plaintiff/petitioner filed intervener petition under Order-I, Rule-10(2) of the CPC. On the ground that the assertion whatsoever been made on behalf of plaintiff to the extent that the property happens to be his exclusive property is wrong, incorrect and further, pleaded that all the three brothers, namely, Ramgati Singh, Harinath Singh and Shashi Nath Singh remained joint and the family of aforesaid three brothers are still joint. Acquisition was made from joint fund on account thereof, they have got right, title and interest in the suit property whereupon are necessary party to the suit which the learned lower court had accepted, and allowed by the order impugned, subject matter of instant petition.

3. It has been submitted on behalf of petitioner that learned lower court was wrong in entertaining the petition filed on behalf of respondent no.2 and 3 and further, illegally allowed them to be impleaded as intervener-defendant because of the fact that instant suit has been filed to inert the revisional survey entry having in name of State of Bihar on account thereof, the controversy did not attract presence of respondent no.2 and 3 nor the lis, as stood, is found incompetent one in absence of respondent no.2 and 3. Furthermore, it has been submitted that from the pleading of respondent no.2 and 3, it is apparent that, they have claimed their share in the property and for



that they have asserted that all the three brothers were joint and the family consisting of all the three brothers is still joint and that acquisition was made out of joint fund which, the petitioner had already disowned since inception of the suit specifying that family had already separated by metes and bounds in the year 1942 and further, acquisition was made by father of the plaintiff/petitioner in his name in the year 1948, exclusively. Thus, as the nature of suit divulges having any scope left for intervener/respondent nor the claim having been raised at their end is found adjudicable thereunder.

4. It has also been submitted that respondent no.2 and 3 were well conscious that the dispute whatever been raised at their end goes out of purview of instant title suit and on account thereof, they have already filed Title (Partition) Suit No.140 of 2014 before Civil Judge, Senior Division, Madhepura. That being so, the order impugned happens to be illegal and is fit to be set aside.

5. The learned counsel for the petitioner also relied upon **(1992) 2 SCC 524, (2005) 6 SCC 733, (2010) 7 SCC 417.**

6. The learned counsel for respondent no.2 and 3 have submitted that order impugned is just, legal and proper and on account thereof, did not require interference. Furthermore, it has been submitted that on account of relief so sought for to the extent of declaration of exclusive title as well as confirmation of possession by the petitioner/plaintiff if allowed to remain uncontested, unchallenged at the end of other co-sharers, then, it will be a question of estoppel as



well as ouster once their presence is acknowledged. Therefore, to challenge the status of the petitioner/ plaintiff while axing upon interest of other co-sharers gave a rightful, legal cause whereupon, to protect their interest, the respondent no.2 and 3/ intervener-defendant filed petition and further, the court while consideration the same, also perceived the subsequent event whereunder a sale deed was executed by all the co-sharers jointly relating to their share, allowed the same.

7. It has also been submitted that after having been allowed, the respondent no.2 and 3 intervener-defendants had already filed their W.S. making counter claim for which proper court fee had already deposited. So, now the nature of the suit has changed whereupon, the claim of the respondent no.2 and 3 /intervener-defendant is also to be adjudicated upon in same manner.

8. Furthermore, it has also been submitted that filing of Partition Suit No.140 of 2014 is not going to prejudice to the interest of the respondent no.2 and 3/intervener-defendant in the background of the fact that apart from present dispute, other properties, considering the intention of the petitioner/plaintiff, required to be partitioned by metes and bound and for that, the aforesaid partition suit has been filed.

9. The learned counsel representing the State has submitted that the present controversy did not affect its interest and so, the State has nothing to say save and except that the revisional survey entry happens to be on the basis of the factual position at the spot and so, it

be retained, rejecting the plea of both of them.

10. It is needless to say that it happens to be the plaintiff who is the commander of his suit (*dominus litis*). That means to say it is the plaintiff who has to see and further, properly identify his adversary in order to seek relief and on that very score, none other could be allowed to intervene. It is the plaintiff who possesses pre-option. It is the plaintiff who is to be perceived intangible on account of any kind of defect while arraying as an adversary. However, the malafide intention of the party could not be allowed to cloud over the interest of others relating to the dispute and for that, power has been vested to the court that in appropriate cases, the prayer of the aggrieved is to be allowed by impleading them as a plaintiff or defendant, whatsoever been. During course of appreciation of such plea, the court has to perceive whether the dispute so brought up at the end of the plaintiff could be decided in absence of that very person apart from others who are present since before. If it could not be, then in that event, the status of that person/intervener is to be perceived as necessary party whereupon their impleadment is found essential for just decision of the case. In likewise manner, if the dispute is going to be decided in its finality as well as in conclusiveness in absence of those persons then in that event, their status happens to be that of proper party and further, in aforesaid background they may or may not to be impleaded. This happens to be distinction in between proper party as well as necessary party.

11. Since before, the aforesaid principle has been enumerated by the Hon'ble Apex Court time-to-time and further, considering the principle laid down under **Razia Begum vs. Sahebzadi Anwar Begum** reported in AIR 1958 SC 886, it has been held in **Ramesh Hiranand Kundanmal vs. The Municipal Corporation of Greater Bombay** reported in 1992 (2) JT SC 116 wherein it has been held:

“.....The only reason which makes it necessary to make a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e. he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.
.....”

12. In **Baluram vs. P. Chellathangam & Ors.** reported in 2015(1) PLJR 316 (SC), the Hon'ble Apex Court considered **Mumbai International Airport (P) Ltd. vs. Regency Convention Centre & Hotels (P) Ltd.** reported in (2010) 7 SCC 417 and held:-

“13. After due consideration of the rival submissions, we are of the view that the High Court erred in interfering with the order of the trial court impleading the appellant as a party defendant. Admittedly, the appellant is a beneficiary of the Trust and under the provisions of the Trusts Act, the trustee has

to act reasonably in exercise of his right of alienation under the terms of the trust deed. The appellant cannot thus be treated as a stranger. No doubt, it may be permissible for the appellant to file a separate suit, as suggested by Respondent 1, but the beneficiary could certainly be held to be a proper party. There is no valid reason to decline his prayer to be impleaded as a party to avoid multiplicity of proceedings. Order 1 Rule 10(2) CPC enables the court to add a necessary or proper party so as to "effectually and completely adjudicate upon and settle all the questions involved in the suit".

14. In **Mumbai International Airport** (Supra) this Court observed:

13. 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 1 Rule 10(2) of the Code of Civil Procedure ("the 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."

14. The said provision makes it clear that a 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. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.”

15. A ‘necessary party’ is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a ‘necessary party’ is not impleaded, the suit itself is liable to be dismissed. A ‘proper party’ is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

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19. Referring to suits for specific performance, this Court in *Kasturi* [(2005) 6 SCC 733], held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is sought to be enforced or their legal representatives; (ii) a transferee of the property which is the subject-matter of the contract. This Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant vendor will not be a necessary party.

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22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the *right* of a non-party to be



impleaded as a party, but about the *judicial discretion* of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.”

15. In the present case, the appellant could not be held to be a stranger being beneficiary of the Trust property. The trial court was justified in impleading him as a party. The High Court erred in interfering with the order of the trial court.”

13. In Baluram (Supra) case, respondent no.2 and 3 acting as a trustee entered into an agreement to sale suit property in favour of plaintiff, and as they failed for that plaintiff had brought up a suit for specific performance of contract. While the suit was pending, the petitioner claiming himself to be a member of the trust had filed petition to be impleaded as a party which the learned lower court had allowed but, the High Court set aside the same whereupon the matter had gone to the Apex Court at the end of the intervener and the same was allowed. Identifying his interest in the suit property.

14. Now coming to the facts of the case, it is evident that petitioner/plaintiff has not only sought for relief for making the revisional survey entry invalid, simultaneously also prayed for



declaration of his exclusive title as well as confirmation of his independent possession. This relief, if allowed, then in that event, is bound to adversely affect upon the interest of the respondent no.2 and 3/intervener-defendant and further, its consequence relating to Schedule-A property regarding which the revisional survey entry has been claimed to be incorrect, invalid and not binding upon the plaintiff, will certainly jeopardize the interest of the respondent no.2 and 3 in case they are directed to be kicked out from the main stream.

15. Furthermore, it is apparent from respective submission, that respondent no.2 and 3 have filed their W.S. raising their counter claim and for that, they have already paid appropriate court fee which, in the aforesaid background persist with regard to wrong survey entry relating to Schedule-A land in name of State of Bihar along with challenging the claim of the petitioner/plaintiff to have declaration of exclusive title along with independent possession. Aforesaid event is permissible in light of principle so laid down in **Rajendra Upadhyay v. Madan Rai & Ors.**, reported in **2007 (4) PLJR 705** as well as **Rohit Singh & Ors. v. State of Bihar** reported in **2007 (1) BBCJ Page 248**. Therefore, the nature of lis in the aforesaid background has changed. However, if the petitioner/plaintiff is found aggrieved thereby, then in that event, petitioner/plaintiff will have an option in terms of Order-VIII Rule-6(c) and in case, a prayer so made at the end of the petitioner/plaintiff, then in that event, the learned lower court will consider the same and will pass appropriate order in accordance

with law, with a further liberty to the petitioner/plaintiff of rebuttal.

16. Furthermore, as pleaded respondent no.2 and 3, intervener/defendants have had filed partition suit no.140/2014, and on that score, it has been urged on behalf of petitioner that in the aforesaid background, their prayer would not have been allowed. The manners of litigation having under instant title suit as well as partition suit are distinct to each other. In partition suit, neither the wrong survey entry could be looked into, nor the finding of present lis, if allowed to sail in absence of intervener. Moreover, after having counter claim at the end of intervener, the court will see whether claim of petitioner/plaintiff for declaration of his exclusive title and possession relating to Schedule-A property is found duly substantiated during trial or the intervener/defendant will also have their access, and further, by such action would avoid multiplicity of the suit. That being so, the pendency of partition suit is found not at all a legal impediment to allow presence of petitioner in the instant suit.

17. With the aforesaid liberty, instant petition is disposed of.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	AFR
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