

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1110 of 2013

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1. Md. Taslim S/O Late Shekhawat Hussain R/O Mohalla-Ruidhasa, P.S.&Distt-Kishanganj
 2. Md. Jalaluddin S/O Late Shekhawat Hussain R/O Mohalla-Ruidhasa, P.S.&Distt-Kishanganj
 3. Md. Salahuddin S/O Late Shekhawat Hussain R/O Mohalla-Ruidhasa, P.S.&Distt-Kishanganj
 4. Julekha Khatoon W/O Md. Hassain, Daughter Of Late Shekhawat Hussain R/O Gariban Mohalla, Kishanganj Town, P.O.&P.S.&Distt-Kishanganj
 5. Mahrun Nisan W/O Md. Rashid, Daughter Of Late Shekhawat Hussain R/O Vill-Bhagirath Patti, P.O.-Damu, P.S.-Basopatti, Distt-Madhubani
 6. Sayeeda Khatoon W/O Gulam Mustafa, Daughter Of Late Shekhawat Hussain R/O Churipatti, Kishanganj Town, P.O., P.S.&Distt-Kishanganj
 7. Halima Khatoon W/O Md. Murtaja, Daughter Of Late Shekhawat Hussain R/O Panibag, Kishanganj Town, P.O., P.S.&Distt-Kishanganj
 8. Md. Taslimuddin S/O Late Mobarak Hussain R/O Panjipara Hat, P.O.-Panjipara, Distt-Uttar Dinajpur, West Bengal
 9. Md. Muslim R/O Panjipara Hat, P.O.-Panjipara, Distt-Uttar Dinajpur, West Bengal
 10. Md. Ibrahim R/O Panjipara Hat, P.O.-Panjipara, Distt-Uttar Dinajpur, West Bengal
 11. Matiur Rahman R/O Panjipara Hat, P.O.-Panjipara, Distt-Uttar Dinajpur, West Bengal

.... Petitioners.

Versus

1. The State Of Bihar Through Collector, Kishanganj
2. Anchal Adhikari, Kishanganj Anchal
3. Jahir Akram S/O Late Dr. Md. Farooque R/O Vill-Burhimari, P.S.-Kichadhaman, Distt-Kishanganj
4. Zubeda Khatoon W/O Md.Hanif, D/O Late Shekhawat Hussain R/O RuidhaSa, Kishanganj, Town, P.O., P.S.&Distt-Kishanganj

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma, Adv.
For the Respondent/s : Mr. Anjani Kumar, A.A.G.-10.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

6 27-01-2016

Heard learned counsel for the petitioner and the

learned counsel appearing for the respondent no.3.

Calling in question the legal sustainability of

the impugned order allowing the prayer of the respondent no.3 to be impleaded as intervener-defendant in the suit, the present application under Article 227 of the Constitution of India.

The necessitous facts are that the Title Suit No.12/2008 has been filed by the plaintiffs for declaration of their right, title, interest and possession over the suit land. In this suit, the plaintiffs have impleaded the State of Bihar and its officials as defendants. From the averments made in the plaint of T.S.No. 12/2008 (Annexure-1), it transpires that the plaintiffs have filed the suit alleging wrong and collusive preparation of the M.S. Khatian in the name of State of Bihar with regard to the suit land and have further alleged that on that basis their possession over the suit land is being threatened by the officials of the State of Bihar. The defendants have filed their written statement and have been contesting the suit.

From the order sheet of the T.S.No. 12/2008 (Annexure-5 to the supplementary affidavit), it transpires that the evidence of the plaintiff was closed on 12.10.2009 and the evidence on behalf of the State- defendants was complete on 27.07.2011 and the argument on behalf of the plaintiffs was heard on 28.07.2011 and 29.07.2011, and 02.08.2011 was the date fixed for further argument on behalf of the plaintiffs. The respondent

no.3 on 02.08.2011 filed the petition under Order 1 Rule 10(2) C.P.C. with prayer to implead him as intervener-defendant in the suit. The plaintiffs filed their objection to the said petition. The learned court below by the impugned order dated 30.04.2012 has allowed the petition of the respondent no.3 and impleaded him as intervener-defendant in the suit.

Assailing the impugned order, Mr.Verma, the learned counsel appearing for the petitioners has submitted that the learned court below has committed error of jurisdiction and has acted with material irregularity in allowing the prayer of the respondent no.3 to be added as intervener-defendant in the suit. It has been submitted that from the facts stated in the plaint and the reliefs prayed therein, it is manifest that the respondent no.3 is neither a necessary nor proper party in the suit and more so when he has raised independent claim over the suit land both against the plaintiffs and the defendants in the suit. Criticizing the impugned order, it has been further submitted that the learned court below has mainly considered the pendency of T.S.No. 15/2008 filed by these petitioners against the respondent no.3 and has allowed the prayer of respondent no.3 to be impleaded as defendant in the suit on that basis stating that the same is being done to avoid multiplicity of the suit and for complete adjudication even though

these two considerations are alien to the provision of Order 1 Rule 10 (2) C.P.C. and also not attracted in the facts and circumstances of the case. It has been further propounded that in any view of the matter the addition of a party in a suit cannot be allowed at the fag-end of the proceeding in a suit when such addition would lead to de novo trial. It has also been argued that the jurisdiction to add a party in a suit can be exercised only when the presence of such a party before the court is found necessary in order to completely and effectually adjudicate and settle all the questions involved in the suit but in the present suit explicitly no claim has been made against the respondent no.3 and the relief has been sought only against the State-defendants.

The learned counsel appearing for the respondent no.3 has supported the impugned order and has submitted that as the petitioners have already filed T.S.No.15/2008 for the suit land against the respondent no.3, the right, title and interest of the respondent no.3 is obviously involved and as such the respondent no.3 is a necessary or at least proper party in the suit. It has been further submitted that the respondent no.3 has got exclusive right, title and possession over the suit land and therefore his presence before the court is necessary when the claim of the plaintiff for the suit land is being adjudicated. It has also

been submitted that the learned court below has committed no illegality in allowing the prayer of the respondent no.3 to be added as defendant in the suit in order to avoid multiplicity of the proceedings and for complete adjudication of the dispute.

After considering the submissions and perusal of the records, it is manifest from the averments made in the plaint of T.S.No. 12/2008 (Annexure-1) that this suit has been filed by the plaintiff-petitioners against the State of Bihar-defendants complaining against the wrong entry of the suit land in the name of State of Bihar and threat of dispossession to the plaintiff by the State of Bihar and its official on the basis of the said survey entry. Therefore, the seminal issue in the suit is the rival claim of title and possession over the suit land by the plaintiff on one hand and the State of Bihar as defendant on the other. It is also admitted fact that both the plaintiff-petitioners and the State-defendants have led their evidence in support of their cases in the suit which is now pending at the argument stage where, after the completion of the arguments on behalf of the State-defendants, the argument on behalf of the plaintiffs has also been done in part.

The averments made in the petition (Annexure-2) filed by the respondent no.3 for his addition as defendant in the suit do not disclose the facts making the presence of the



respondent no.3 necessary for the purpose of complete and effectual determination of the issues arising between the plaintiff-petitioners and the State-defendants in the suit. It is obvious that the independent claim of right, title and possession as made by the respondent no.3 over the suit land is not at all connected with the issues arising between the parties to the suit. It is also not the case of respondent no.3 that any decree or decision of the present suit would directly and adversely affect him curtailing his legal rights which he has been claiming over the suit land. The pendency of T.S.No. 15/2008 between the plaintiff-petitioners and the respondent no.3 also cannot be a valid ground in itself to allow the prayer of the respondent no.3 to be added as party defendant in the present suit. It is settled by now that the main object for the exercise of power under Order 1 Rule 10 (2) C.P.C. is not to avoid the multiplicity of the proceeding but the complete and effectual determination of all questions involved between the parties in the suit.

While passing the impugned order the learned court below appears to have been oblivious of the fact that the addition of the respondent no.3 as party in the suit would necessarily lead to introduction of a new issue in the suit relating to the title and possession of the respondent no.3 vis-à-vis the



plaintiff-petitioners and the State-defendants for which there has been no pleading by the plaintiffs in the plaint or by the State-defendants in their written statement. The power under Order 1 Rule 10 (2) C.P.C. cannot be exercised in the manner where it would result in a new trial on new facts against a new defendant. Such a course is complete antithesis to the concept of complete and effectual adjudication of all questions involved in the suit. The plaintiff is dominous litis and he cannot be compelled to fight out a new litigation against a person as defendant in the suit against whom he has not made any pleading nor has sought any relief. At this juncture , it would be fruitful to take into notice the dictum in this regard laid down by the apex court in the case of ***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay, (1992)2 Judgment Today 116*** as follows:

14. "... It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that

he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person 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...” (***Emphasis supplied***).

Tested on the anvil of the principles as laid down above by the apex court the reasons assigned by the learned court below in the impugned order for impleading respondent no.3 as a party defendant in the suit do not appear to be legally sustainable. The learned court below has also acted with material irregularity in impleading the respondent no.3 as defendant in the suit at the fag-end of the trial without contemplating the effect of such impleadment leading to de novo trial. In the case of ***Anokhe Lal Vs. Radhamohan Bansal , 1997 SC 257*** their lordships have observed that “ *if the consequence of such addition would involve a de novo trial, the court should normally have disallowed the application. Way back in 1931 the Privy Council did not allow the application for impleadment on the ground that such a course might throw open a de novo trial of the suit, even after noticing that the party sought to be impleaded was not merely a proper party but a necessary party in the suit. (Naba Kumar Hazra Vs Radhashyam Mahish, A.I.R.1931 P.C. 229)...* ”

For the aforesaid reasons and discussions, this Court comes to the conclusion that the learned court below has committed error of jurisdiction and has acted with material

irregularity in passing the impugned order. The writ application is, accordingly, allowed and the impugned order is quashed. The learned court below is directed to proceed expeditiously for disposal of the suit.

The writ application is allowed with direction.

(V. Nath, J)

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