

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10062 of 2010

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1. Mosomat Munni Devi W/O Late Chedi Poddar R/O Vill.- Sabour Tola Babupur,
P.S. And P.O.- Sabour In The District Of Bhagalpur

.... Petitioner/s

Versus

1. Bhagwat Poddar S/O Late Sukhdeo Poddar R/O Vill.- Sabour Tola Babupur,
P.O. & P.S.- Sabour, In The District Of Bhagalpur
2. Santosh Kumar Poddar S/O Bhagwat Poddar R/O Vill.- Sabour Tola Babupur,
P.O. & P.S.- Sabour, In The District Of Bhagalpur
3. Sanjeev Kumar Poddar S/O Bhagwat Poddar R/O Vill.- Sabour Tola Babupur,
P.O. & P.S.- Sabour, In The District Of Bhagalpur
4. Awadhesh Kumar Poddar S/O Bhagwat Poddar R/O Vill.- Sabour Tola Babupur,
P.O. & P.S.- Sabour, In The District Of Bhagalpur
5. Hirday Narain Poddar S/O Late Sukhdeo Poddar R/O Vill.- Sabour Tola
Babupur, P.O. & P.S.- Sabour In The District Of Bhagalpur
6. Jai Prakash Poddar S/O Hirday Narayan Poddar R/O Vill.- Sabour Tola Babupur,
P.O. & P.S.- Sabour In The District Of Bhagalpur
7. Prahlad Poddar S/O Hirday Narayan Poddar R/O Vill.- Sabour Tola Babupur,
P.O. & P.S.- Sabour In The District Of Bhagalpur
8. Vinay Kumar Poddar S/O Hirday Narayan Poddar R/O Vill.- Sabour Tola
Babupur, P.O. & P.S.- Sabour In The District Of Bhagalpur
9. Vijay Poddar S/O Hirday Narayan Poddar R/O Vill.- Sabour Tola Babupur, P.O.
& P.S.- Sabour In The District Of Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashutosh Jha
Mr. Narendra Pandey, Advocates.

For the Respondent/s : Mr. Mukesh Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 13-07-2016

Heard Mr. Ashutosh Jha appearing for the petitioner and

Mr. Mukesh Kumar Jha for the respondent nos. 1 to 4.

An application under Order 1 Rule 10(2) of the Code of
Civil Procedure (for short 'C.P.C') was filed by the petitioner in Title
Suit no. 64 of 2006/Tr. No.242/2009 pending on the file of learned

Sub-Judge-7, Bhagalpur for impleading her as party defendant. A rejoinder thereto was filed by the plaintiffs-respondents. On a consideration of the case of the parties, the learned trial Judge by order dated 28.4.2010, rejected the said application observing as under:-

“In this way I find that in the light of above submission of plaintiff it appears the provision U/o 1 rule 10 (2) CPC has no application in the present suit as she has got no right, title and interest in the suit property so presence of the intervenor before is not at all necessary to enable the court effectually and completely and to adjudicate and settle all questions involved in the suit. As such at this stage I do not find any force in the prayer of intervenor petitioner's petition if she would have any grievance she ought to have filed fresh suit for her grievance because this suit is of 2006 and going on at the stage of plaintiff's evidence and intervenors are not concerned which is admitted by plaintiffs in the suit matter.”

Assailing the same, the present writ petition is filed.

The plaintiffs filed the suit seeking partition in the joint Hindu family property. According to the plaintiffs-respondent(s), Sukhdeo Poddar was the common ancestor. He died leaving behind three sons, namely, Hriday Narayan Poddar, Chhedi Poddar and Bhagwat Poddar. Sons of Bhagwat Poddar are the plaintiffs-respondents. It was asserted that Chhedi Poddar had a wife and a daughter. Aforesaid Chhedi Poddar, however, died whereafter his

wife deserted the family and started leaving at different place and subsequently got remarried. Descendants of Hriday Narayan Poddar were therefore only made party defendants to the suit seeking partition.

Once the petitioner came to know about pendency of the suit, she filed an application under Order 1 Rule 10(2) CPC on 26.2.2009 claiming herself as the widow of Chhedi Poddar and prayed for her impleadment as defendant in the suit. A rejoinder thereto, as noticed above, was filed by the plaintiffs. It was stated that such application was not maintainable in the eye of law. It was filed to encumber the record and to put undue pressure on the plaintiffs. There was inordinate delay in filing such application. The plaintiffs had examined one witness in the meanwhile.

It has been submitted on behalf of the petitioner that the sole purpose of the provisions under the CPC is to allow such impleadment where presentable case is made out by the person applying for impleadment. Here is a case where all factual foundation with regard to the interest of the applicant/writ petitioner in the subject property has been led in the plaint when it was stated that Sukhdeo Poddar left behind three sons, one being the deceased husband of the writ petitioner. The petitioner claiming herself as widow of Chhedi Poddar cannot be placed in a disadvantageous

position by relegating her to file a separate suit which would again tantamount to multiplicity of the litigation. Whether on account of re-marriage, the petitioner is entitled to have share in the property is a matter which the learned Trial Court shall examine on the basis of materials/evidence placed before it.

In order to buttress his submission, the petitioner has relied on the following judgment:-

- (1) 2008(1) PLJR 78 (SC) (para-14) Sumtibai & Ors.
vs. Paras Finance Co. Regd. Partnership Firm
Beawer (Raj.) Thru Smt. Mankanwar W/o Parasmal
Chordia (Dead) &Ors.

Mr. Jha appearing for the respondents-plaintiffs has, however, resisted the claim. He submits that the petitioner could have filed a separate suit for declaration of her status as the widow of late Chhedi Poddar and seek further partition of the joint family property left behind by Sukhdeo Poddar.

In Sumtibai (supra) the Hon'ble Apex Court, considering the scope and ambit of Order 1, Rule 10 held as under in para-14:-

“14. In view of the aforesaid decisions we are of the opinion that Kasturi's case (supra) is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that

suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.”

In my view, the learned Court below acted with material irregularity in not considering the true ambit and scope of order 1 Rule 10 and thereby passed an order which has occasioned failure of justice.

It has been pointed out that while issuing notice to the respondents, further proceedings of the suit was stayed. The suit, as on today, is resting at the stage of adducing evidence on behalf of the plaintiffs. If any such application is allowed, it shall not cause much prejudice to the plaintiff as within a specified period of time granted by the trial Court the petitioner would be called upon to file the written statement and the trial can proceed after recasting the issues. However, on grant of relief some inconvenience shall be caused to the plaintiff(s) as disposal of the suit shall be delayed.

The writ application is allowed subject to payment of a cost in the sum of Rs. 750/- (Seven hundred and Fifty) to the plaintiffs-respondents. The order dated 28.4.2010 passed by the learned Subordinate Judge-7, Bhagalpur in Title Suit no. 64 of

2006/T.R. no.242 of 2009 is set aside. The trial Court shall now proceed to dispose of the trial.

(Kishore Kumar Mandal, J)

Shyam/-

AFR/NAFR	NAFR
CAV DATE	N/A
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