

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11165 of 2014

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1. Ram Udgar Mahton Son of Late Hakru Mahton Resident of Village- Tara Bariarpur, P.O- Khodawadpur, Pargana- Bhusari, Sub Division and District- Begusarai.

.... Petitioner/s

Versus

1. Rajendra Mahton Son of Ayodhya Mahton Resident of Village- Tara Bariarpur, P.O- Khodawadpur, Pargana- Bhusari, Sub Division and District- Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar Sharma, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-07-2016

Heard learned counsel for the petitioner.

2. The petitioner is the plaintiff in the suit and has filed the present application under Article 227 of the Constitution of India questioning the legal acceptability of the impugned order by which the learned court below has allowed the prayer of one Vijay Singh Kushwaha to be impleaded as party defendant in the suit.

3. The matrix of fact as apparent from the averments in the application as well as the submissions on behalf of the parties demonstrates that the suit has been filed by the plaintiff for permanent injunction against the defendant. During the pendency of the suit a petition was filed by one Vijay Singh Kushwaha claiming himself to have interest in the suit property being the nephew of the



plaintiff asserting that the suit property was the property of the common ancestors. The plaintiff filed his rejoinder denying the claim of the said Vijay Singh Kushwaha. By the impugned order the learned court below has allowed the prayer of Vijay Singh Kushwaha to be impleaded as party defendant.

4. Mr. Singh, learned senior counsel for the petitioner has firstly submitted that learned court below has failed to consider the scope of the suit being only a suit for permanent injunction and not a suit for title. It has been next contended that the said Vijay Singh Kushwaha filed the petition after a lapse of nearly 24 years as the suit has been filed in the year 1989 and therefore, also the learned court below should not have exercised its jurisdiction in allowing the prayer of Vijay Singh Kushwaha. It has been submitted that the fact has not been denied in the court below that the said Vijay Singh Kushwaha is the nephew of the plaintiff.

5. During the course of submission, it also transpires that the said Vijay Singh Kushwaha has not been made party in this application.

6. After considering the submissions and perusal of the impugned order it is manifest that the plaintiff has filed the suit for grant of permanent injunction against the defendant. The petition filed by Vijay Singh Kushwaha claiming to have interest in the suit property has been considered by the court below along with the fact

that the plaintiff has not denied the status of Vijay Singh Kushwaha as his nephew. Learned court below in the impugned order has therefore rightly come to the conclusion that the presence of Vijay Singh Kushwaha in the suit as a party defendant is necessary for adjudication of the issues/questions arising in the suit between the parties. The submission by the learned senior counsel appearing on behalf of the petitioner that in the suit for permanent injunction no question of title is to be gone into is not sustainable as even in suit for permanent injunction the court is required to incidentally look into the title of the plaintiff over the suit property. The provision of Order 1 Rule 10 C.P.C does not provide for any limitation for filing a petition and it is the discretion of the court after considering the facts and circumstances either to implead a party or strike-off the claim of a party in the suit.

7. In view of the aforesaid reasons and discussions, this Court does not find any merit in the application. It is accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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