IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.35 of 2016

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Muni Singh & Anr

.... Appellant/s

Versus

Laxmi Rai & Ors

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Deepak Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

3 02-09-2016 Heard the learned senior counsel, Mr. Rajiv Kumar Verma for the petitioners and the learned counsel, Mr. Pankaj Kumar for the respondent Nos.1, 2 and 5. It is submitted that the other respondent Nos.3, 4 and 6 are supporting the plaintiff-petitioners and, therefore, no notice be issued on them. Therefore, I heard the parties and the Civil Miscellaneous application is being disposed of without hearing the other respondents.

This application under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners for setting aside the order dated 22.02.2016 passed by Sub Judge I, Gopalganj in Title Suit No.150 of 2001 whereby the learned Court below rejected the application filed by the plaintiffs-petitioners under Order I Rule 10 C.P.C.

It appears that the plaintiffs-petitioners filed Title Suit No.150 of 2001 claiming their share in the suit property on the

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ground that the suit property is joint family property. The defendants filed written statement denying the claim of the plaintiffs and they also filed a counter claim under Order VIII Rule 6A C.P.C. In the written statement, the defendants took plea that the plaintiff's sister and her heirs have not been added as party and they are necessary party in the suit. The parties adduced evidences and thereafter application was filed by the plaintiffs-petitioners under Order I Rule 10 C.P.C. for adding the necessary party as party-defendant in the suit. The respondent Nos.1, 2 and 5, who are defendants in the Court below and who have filed the counter-claim, filed objection to the application. By the impugned order, the Court below has rejected the application filed by the plaintiffs-petitioners on the ground of delay.

Order I Rule 10 C.P.C. provides that "the Court may at any stage of the proceedings, 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." Therefore, according to this provision, it appears that it is the jurisdiction of the Court to add a

necessary party at any stage.

According to Order I Rule 9 C.P.C., “no suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Provided that nothing in this rule shall apply to non-joinder of a necessary party.” Therefore, according to this provision, if the necessary party is not joined, the suit is to be dismissed. In view of this provision, the jurisdiction has been conferred on the Court to give justice to the parties and the jurisdiction is vested on the Court to add a necessary party in the suit that too at any stage.

The Hon’ble Supreme Court in the case of **Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and others**, **(2010) 7 Supreme Court Cases 417** at paragraph 24 has given some illustrations regarding exercise of discretion under this rule. According to Supreme Court, as has been held at paragraph 24.4, that if an application is made by a plaintiff for impleading someone as a proper party subject to limitation bonafides, etc. the Court will normally implead him if he is found to be a proper party.

Now, therefore, in view of this settled principles of law when an application is filed by the plaintiff seeking impleadment of some person as necessary party normally subject to limitation the said person should be added by the Court. The Court is required to exercise the jurisdiction judiciously and not arbitrarily. If the person sought to be added as party is necessary party then the person must be added so as to decide the dispute between the parties for all time to come.

In the present case at our hand, it is the case pleaded by the defendants that the persons are necessary party. No doubt at the earlier stage, the application for addition of those persons was not made by the plaintiffs but on that ground, justice cannot be denied to the plaintiffs because it may happen that in absence of the said persons, the suit may be dismissed as non-joinder of necessary party.

It is settled principles of law that the suits are not to be dismissed generally for want of necessary party. If at all in the judgment, the Court finds that presence of any necessary party is required to be added as party then the Court has the jurisdiction suo motu to add him as party. In such circumstances, on the ground of delay only, the application filed by the plaintiffs could not have been rejected by the Court below. In my opinion,

therefore, the Court below has refused to exercise a jurisdiction vested in it by law and thereby it occasioned failure of justice.

Thus, this Civil Miscellaneous application is allowed. The impugned order is set aside. The application filed by the plaintiffs is allowed. The persons sought to be added as party-defendant are added as party in the suit in the Court below.

(Mungeshwar Sahoo, J)

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