

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11642 of 2012

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1. Ram Bachan Prasad Son Of Late Sarvan Sah Resident Of Village Kateya Bazar, P.O. Kateya, P.S. Kateya, District Gopalganj

.... Petitioner/s

Versus

1. Bhola Sah Son Of Late Gokhula Sah Resident Of Village Kateya Bazar, P.O. Kateya, P.S. Kateya, District Gopalganj
2. Most. Gyatri Wife Of Late Ram Chandra Sah Resident Of Village Kateya Bazar, P.O. Kateya, P.S. Kateya, District Gopalganj
3. Nathu Prasad Son Of Late Ram Chandra Sah Resident Of Village - Kateya Bazar, P.O. Kateya, P.S. Kateya, District Gopalganj
4. Rajan Prasad Son Of Late Ram Chandra Sah Resident Of Village - Kateya Bazar, P.O. Kateya, P.S. Kateya, District Gopalganj
5. Mantu Prasad Son Of Late Ram Chandra Sah Resident Of Village - Kateya Bazar, P.O. Kateya, P.S. Kateya, District Gopalganj
6. Bulet Prasad Son Of Late Ram Chandra Sah Resident Of Village - Kateya Bazar, P.O. Kateya, P.S. Kateya, District Gopalganj
7. Sona Devi Wife Of Om Prakash, Daughter Of Late Ram Chandra Sah Resident Of Village - Kateya Bazar, P.O. Kateya, P.S. Kateya, District Gopalganj
8. Pushpa Devi Wife Of Dharmendra Prasad, Daughter Of Late Ram Chandra Sah Resident Of Village - Kateya Bazar, P.O. Kateya, P.S. Kateya, District Gopalganj
9. Renu Jaiswal Wife Of Jai Prakash @ Chunnu, Daughter Of Late Ram Chandra Sah Resident Of Village - Kateya Bazar, P.O. Kateya, P.S. Kateya, District Gopalganj
10. Punam Devi Wife Of Sanjay Jaiswal, Daughter Of Late Ram Chandra Sah Resident Of Village - Kateya Bazar, P.O. Kateya, P.S. Kateya, District Gopalganj
11. Ram Autar Sah Son Of Late Bhagwan Sah Resident Of Village - Kateya Bazar, P.O. Kateya, P.S. Kateya, District Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Prasad -Advocate

For the Respondent No.1: Mr. Ranjan Kumar Dubey –Advocate

For the Respondent No.11: Mr. Shailendra Kumar Dwivedi -Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 29-01-2016 Supplementary affidavit filed on behalf of respondent no.1 has been taken on record.

2. Heard learned counsel for the petitioner as well as learned counsel for the Respondents no.1 and 11.

3. Out of two plaintiffs, the petitioner Ram Bachan

Prasad has assailed order dated 17.03.2012 whereby and whereunder the lower court had allowed the prayer of Respondent No.11, Ram Autar Sah to be impleaded as defendant.

4. By referring two decisions reported in 2014 PLJR (4) 300 and 2012 PLJR (3) 323, it has been submitted on behalf of petitioner that neither any relief has been claimed against Respondent No.11 nor his presence has been shown in the plaint, on account thereof, the learned lower court should have considered that Respondent No.11 is not at all a necessary party and on account thereof, should not have allowed the prayer made on his behalf under the garb of Order-I Rule 10(2) of the CPC. It has further been submitted that plaintiff is the master of his cause and in the aforesaid capacity he has to see the status of persons to be shown as defendant in order to satisfy his relief so claimed for. Neither the defendant nor the court could direct the plaintiff to implead a particular person in order to proceed with the trial. Therefore, presence of Respondent No.11 is not at all warranted during course of trial inconsonance with the relief so claimed for. Hence, the order impugned is bad.

5. Furthermore, it has been submitted that petitioner/plaintiff had asserted that at an earlier occasion there was partition amongst the sons of Shravan Sah and during course thereof, Survey Plot No. 1752 has been allotted to the plaintiff.



Their ingress and outgress was passing through Survey Plot Nos. 1753, 1754. 1753/2831 measuring 9 feet x 90 feet and as the plaintiff apprehends obstruction at the end of the defendant on account thereof, the instant suit has been filed to prevent the defendant from obstructing the land. During midst thereof, there cannot be presence of Respondent No.11 nor the relief so claimed for is found against the Respondent No.11 nay the presence of Respondent no. 11 is necessitated in order to grant such relief coupled with the fact that in case the suit is decreed, the execution of the decree could proceed smoothly in absence of Respondent No.11, so presence of Respondent No.11 was not at all necessitated nor could be identified as necessary party. Hence, the order impugned directing the Respondent No.11 to be impleaded as defendant 3rd set is nothing but an abuse of process of the court. So submitted that the order impugned is fit to be set aside.

6. On the other hand, learned respective counsels representing Respondents No.1 and 11 have controverted the submissions made on behalf of petitioner and submitted that at initial stage there were two plaintiffs, Ram Chandra Prasad and Ram Bachan Prasad out of whom Ram Chandra Prasad, considering the status of Respondent No.11 to be their *Bhagina*, and further, having their presence compromised the case with him. By having such compromise, the presence of Respondent No.11 in



the property left by deceased, Shravan Sah has been accepted. It has also been submitted that from para-8 of the plaint, it is evident that petitioner knowingly and intentionally did not assert with regard to presence of Yashodiya, mother of Respondent No.11 who was their sister and further, whether she had ever entered into a partition during course of partition so alleged as, it has been specifically asserted in para-8 of the plaint that partition was effected amongst the four sons of Shravan Sah. That means to say, neither presence of Yashodiya has been considered nor she has been allotted share in accordance with her entitlement. Therefore, claiming exclusively over Survey Plot No. 1752 is not at all tenable and that being so, presence of Respondent No.11 over Survey Plot No. 1752 cannot be ruled out. Hence the plea of ingress and outgress through the disputed land has also to be availed by the respondent no.11 and for that their presence in the suit is necessary.

7. This suit has not been filed in a representative capacity on behalf of Respondent No.11, that being so, presence of Respondent No.11 in the suit happens to be necessary and for that the learned lower court had rightly allowed the prayer.

8. Under CPC, rightly it happens to be under domain of plaintiff to array the defendant inconsonance with relief so sought for. But, the status of the plaintiff himself with regard to, relief has

also to be looked into. The petitioner/plaintiff has asserted that Survey Plot No. 1752 which happens to be an ancestral property to be allotted in his share along with the share of one Ram Chandra Prasad during course of previous partition and admittedly from para-8 thereof, presence of Yashodiya has not been appreciated and in likewise manner during course of partition. That means to say, presence of Yashodiya irrespective of assertion of the plaintiff walked over the land left by late Shravan Sah, being his daughter in accordance with Section-8 of the Hindu Succession Act and on account thereof, claim of the petitioner/plaintiff to be the sole proprietor of ancestral property cannot be accepted in exclusive manner. That being so, the passage claimed by him exclusively ousting presence of other co-sharers is a matter of concern and on account thereof, presence of Respondent No.11 is found under the category of necessary party.

9. That being so, I do not see any cogent reason to interfere with the order impugned. Petition is rejected.

(Aditya Kumar Trivedi, J)

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