

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.893 of 2016

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1. Ram Bali Chaudhary, S/o Late Prem lal Chaudhary.
 2. Uday Chaudhary, S/o Ram Bali Chaudhary
 3. Renu Devi, W/o Late Yamuna Chaudhary
 4. Anil Chaudhary
 5. Sunil Chaudhary, Both S/o Late Yamuna Chaudhary
 6. Kalpaana Devi Daughter of late Yamuna Chaudhary
 7. Ashok Chaudhary S/o Chandra Bali Chaudhary
 8. Ram Chandra Chaudhary S/o Late Prem lal Chaudhary. All resident of vill.-
Shubhankarpur Pohaddi, P.O. & P.S.- Bahera Distt.- Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar, through Principle Secretary Revenue depts, Bihar, Patna.
2. The Collector Darbhanga, Darbhanga
3. The circle Officer, Benipur District- Darbhanga.
4. Baidyanath Chaudhary, Son of late Ugra Narayan Chaudhary
5. Ram Punit Chaudhary Son of late Rajendra Chaudhary, Both resident of village
& P.O.- Pohaddi, P.S.- Bahera, Distt.- Darbhanga.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Anis Akhtar

For the Respondent/s : Mr. Md. Khurshid Alam-AAG-12

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-04-2017

Heard Mr. Anis Akhtar, learned counsel for the
petitioners and the learned counsel for the intervenor-respondents.

The legal acceptability of the impugned order by which
the learned court below has allowed the prayer of the defendant-
respondents to be impleaded as party defendants in the suit has been



questioned in this application under Article 227 of the Constitution of India.

The matrix of the facts discloses that the plaintiff-petitioners filed T.S. No.68 of 2015 before the court of Sub-Judge-I, Benipur, Darbhanga for declaration of title over the property mentioned in schedule 1 of the plaint and also for confirmation of the possession along with consequential reliefs. As is apparent from the plaint (Annexure-1) of the suit, the State of Bihar and its officials (respondent 1st Set in the present application) have only been impleaded as defendants. It has been averred in the plaint that the survey khatian for the suit land has been wrongly recorded in the name of the defendants and the suit has been filed apprehending settlement of the suit land by the defendants. During the pendency of the suit, a petition (Annexure-2) was filed by the respondent nos.4 and 5 praying for their impleadment as defendants in the suit asserting their own independent right, title and possession over the suit land. By the impugned order, the learned court below has allowed the prayer of the respondent nos.4 and 5 for their impleadment as defendants in the suit property holding that the interest of the respondent nos.4 and 5 in the suit property is involved in the suit and, therefore, they are necessary parties.

Mr. Anis Akhtar, the learned counsel for the petitioners



has submitted that the learned court below has passed the impugned order ignoring the well settled principles of law with regard to jurisdiction under Order 1 Rule 10(2) CPC. It has been contended that the plaintiff-petitioners have sought the reliefs in the suit only against the defendant-State of Bihar and its officials and any decree passed in the suit would not be binding upon the intervenor-respondent nos.4 and 5. It has been propounded that mere establishment of right, title and interest in the suit land is not itself sufficient for allowing the prayer for impleadment of the defendants in the suit. It has been pointed out that the respondent nos.4 and 5 have filed T.S. No.3 of 2016 for declaration of their right and title over the suit land on the basis of prescription as well as adverse possession besides other ancillary and consequential reliefs and in that suit, as apparent from the plaint (Annexure-4), the present petitioners have been impleaded as defendants besides State of Bihar and its officials. In sum and substance, it has been the contention on behalf of the petitioners that in view of the fact that intervenor-respondent nos.4 and 5 have filed their own independent suit on the basis of their cause of action for the suit land, the prayer for being impleaded as party defendants in the suit filed by the plaintiffs-petitioners cannot be allowed in the facts and circumstances of the case.

Learned counsel for the respondent nos.4 and 5,



however, has supported the impugned order and has canvassed that as right, title and interest of the respondent nos.4 and 5 have been found to be involved in the suit land by the learned court below, there is no scope for interference in the impugned order as prayed by the petitioners. It has been submitted that in any view of the matter this Court at least should direct both the suits to be heard together in the interest of justice.

The nature and scope of the jurisdiction of the court under Order 1 Rule 10 (2) C.P.C. for impleading a person as party in a suit has been considered by the Apex Court in the case of **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay, (1992) 2 SCC 524** and it has been ruled 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.....
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.....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)

Their Lordships in the above judgment have also opined that the true test lies in considering as to whether the relief prayed by the plaintiffs will directly affect the intervenor in the enjoyment of his legal rights. The same view has been reiterated in **New Redbank Tea Co. PVT. LTD. Vs. Kumkum Mittal, (1994) 1 SCC 402** holding that the provision under Order 1 Rule 10 (2) C.P.C. empowers the court to implead as a party to a suit a person (1) who ought to have been joined whether as plaintiffs or defendants or (ii) whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

The above dictum of the Apex Court leaves no room for doubt that a person cannot be impleaded as party in the suit under Order 1 Rule 10(2) CPC whose only object is to prosecute his own cause of action. From the facts as mentioned above, it is demonstrably clear that in view of the averments and reliefs claimed by the plaintiff-petitioners in their Title Suit No.68 of 2015 the respondent nos.4 and



5 are not the persons who are required to be joined as defendants in the suit. It is also clear that presence of the respondent nos.4 and 5 in the suit filed by the plaintiff-petitioners is also not required as their presence before the court is not necessary to enable the court to effectually and completely adjudicate the questions involved in the suit. Even if they have claimed their independent right, title and interest in the suit land they cannot be impleaded as party defendants in the suit for the said reason alone. The plaintiff-petitioners in their suit have come out with their cause of action against the defendants State of Bihar and its officials and for the purpose of determination of issues arising between them, the presence of the respondent nos.4 and 5 in the suit is not at all necessary. This Court, therefore, declines to align with the submission on behalf of the respondent nos.4 and 5 that the respondent nos.4 and 5 with their claim of right, title and interest in the suit property can be impleaded as defendants in the suit. Learned counsel for the respondent nos.4 and 5 has failed to persuade this Court to take a view that any decree and order passed in the suit filed by the plaintiff-petitioners would directly effect the interest of respondent nos.4 and 5 which they claim in the suit property. This Court therefore holds that the impugned order is erroneous and deserves to be overturned. It is so done accordingly.

However, in the facts and circumstances of the case, this



Court finds force in the submission of learned counsel for the respondent nos.4 and 5 that both the suits be heard together. Learned counsel for the petitioner has raised no objection to this proposition.

Accordingly, the parties to this application are set at liberty to make prayer for hearing of both the suits i.e. T.S. No.68 of 2015 and T.S. No.03 of 2016 by filing petition in accordance with law before the appropriate court which shall consider the desirability of hearing of both the suits together by the same court in the facts and circumstances of the case and in accordance with law.

The application is, accordingly, allowed with the liberty as abovementioned.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.06.2017
Transmission Date	

