

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16621 of 2013

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Amit Kumar Sinha Son Of Sri Braj Kishore Prasad Resident Of Village -
Dharampur Nistama, Mohalla - Amirgannj Mishrit Tola Dharampur, P.S. And
District – Samastipur.

.... Petitioner/s

Versus

1. Jagdeep Prasad Singh Son of Late Ramchandra Singh Village - Sarai, P.S.
Patori, District Samastipur.
2. Pramodanad Prasad Son of Late Dharmavtar Prasad.
3. Rita Sinha Wife of Pramodanand Prasad both Resident of Mohalla - Kazipur,
Ward No.5, P.S. Samastipur Town, District – Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Madhuri Kumari, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-02-2017

Heard Mrs. Madhuri Kumari, learned counsel for the
petitioner.

The petitioner in this application under Article 227 of the
Constitution of India has challenged the legal acceptability of the
impugned order dated 04.06.2013 passed in the T.S. No. 110 of
2011 rejecting the prayer of the petitioner to be impleaded as
defendant in the suit.

From the averments made in the application and also
from the submissions on behalf of the petitioner, it is apparent that
the respondent no. 1 who is plaintiff in the learned court below is the



admitted owner of the suit property described in schedule-I of the plaint of T.S. No. 110 of 2011. The respondent no. 1 has filed this suit for declaration that the sale deed dated 29.04.2011 said to have been executed by him in favour of the respondent no. 2 for the suit land has been obtained by fraud and by administering intoxication upon him and therefore, the said sale deed is not binding upon him. During the pendency of the said suit, however, the present petitioner filed the petition claiming to be impleaded as party defendant in the suit on the basis that a sale deed was executed for the suit land by the respondent no. 1 in his favour on 14.06.2011 and, therefore, having acquired interest in the suit property the prayer was made to be impleaded as party therein in order to protect his interest. It further transpires from the records that the prayer as made by the petitioner was opposed by the plaintiff-respondent no. 1 by filing a rejoinder (Annexure-2) denying the interest of the petitioner as claimed and asserting that the several litigations both criminal and civil were pending between the plaintiff-respondent no. 1 and the petitioner. It was also alleged that the documents produced by the petitioner were all forged and fabricated documents.

The learned court below, after considering the facts and circumstances of the case, has come to the conclusion that as the intervener-petitioner wants to assert his own independent right over



the suit property he can file his own suit but cannot be impleaded as intervener-defendant. The prayer has been, accordingly, turned down by the impugned order.

Learned counsel for the petitioner has strongly asserted that as the petitioner has purchased the suit property by the registered sale deed, he is definitely an interested person to be impleaded as party in the suit the result of which will directly affect his interest in the suit property. Learned counsel has also relied upon a decision in the case of **Savitri Devi Vs. District Judge, Gorakhpur, (1999) 2 SCC 577.**

After considering the submissions and the materials on record as well as the impugned order, it is manifest that the petitioner has purchased the suit property from the respondent no. 1 (plaintiff in the suit) by sale deed dated 14.06.2011. It is also apparent that the T.S. No. 110 of 2011 has been filed by the plaintiff-respondent no.1 against the respondent nos. 2 and 3 for avoiding the earlier sale deed dated 29.04.2011 for the suit land on the basis of assertion that the said sale deed was obtained by the respondent nos. 2 and 3 after playing fraud upon the plaintiff-respondent no. 1. The present petitioner is definitely a person who had no right, title or interest in the suit property on the date of the said sale deed 29.04.2011 (challenged in the suit) and was in no



manner connected with the allegation of fraud in obtaining the said sale deed as alleged. It is further manifest that the issue of fraud as alleged in the suit by the plaintiff is the germane issue to be decided in the suit and as such, the petitioner cannot be a person ‘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’.

The ambit and scope of Order 1 Rule 10 C.P.C. has been explained by the Apex Court in the case of **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay, 1992 (2) SCC 524** as follows:-

“8.....The case really turns on the true construction of the rule in particular the meaning of the words “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”. The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose.....”

“14.....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 question to be settled, therefore, must



be an 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.....”

In Savitri Devi Vs. District Judge, Gorakhpur, (1999)

2 SCC 577 which has also been relied upon on behalf of the petitioner the observation made in the case of **Ramesh Hirachand Kundanmal** (supra) have also been approvingly taken into notice by their lordships who have held as follows:-

“9.....In the present case, the subject matter of the dispute between the appellant and respondent 1 is the demolition of the unauthorized construction in pursuance to the notice under section 351 of the Bombay Municipal Act. Respondent 2, the lessee, in possession of the service station asserts that the appellant has made an unauthorized construction and respondent 2 is in possession of material evidence to that effect. No notice has been issued to respondent 2 by the Municipal Corporation and no case of any collusion between the appellant and the Municipal Corporation is alleged. On the other hand, it is the case of the appellant that respondent 2 is instrumental in the initiation of the proceedings by the Municipal



Corporation against the appellant and the present application is for collateral purposes. In the light of such averments, it has to be considered whether respondent 2 is a necessary or proper party in the present action”

“11.....In Ramesh Hirachand Kundanmal vs. Municipal Corpn. of Greater Bombay this Court discussed the matter at length and held that though the plaintiff is a “dominus litis” and not bound to sue every possible adverse claimant in the same suit, the Court may at any stage of the suit direct addition of parties and generally it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of a particular case”

The Court also observed that though prevention of actions cannot be said to be the main object of the Rule, it is a desirable consequence of the Rule.....the person concerned must be having a direct interest in the action was reiterated by the Bench.”

In view of the dictum of the Apex Court as above, this Court has not been persuaded to come to the conclusion that the present petitioner is either necessary or proper party in the suit, and further that the judicial discretion, as exercised by the learned court below observing that the present petitioner has independent cause of action against the plaintiff-respondent, requires interference under



Article 227 of the Constitution of India.

The application, accordingly, fails and is dismissed, as
such.

(V. Nath, J)

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