

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15997 of 2013

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Smt. Motijharo Devi W/O Sri Jay Prakash Singh Resident Of Village - Lahang
Dumariyaon, P.S. Bihiyan, District - Bhojpur

.... Petitioner/s

Versus

1. Saroj Singh S/O Ram Suresh Singh Resident of Village - Lahang Dumariyaon,
P.S. Bihiyan, District – Bhojpur.
2. Bishwanath Singh.
3. Baijnath Singh both S/O Suryabali Singh.
4. Raghurai Singh.
5. Akhileshwar Singh.
6. Birendra Singh all S/O Late Bhupnarayan Singh.
7. Ramdev Singh S/O Late Sri Darshan Singh.
8. Matmo Kuer W/O Late Rajendra Singh Resident of Village - Lahang
Dumariyaon, P.S. Bihiyan, District – Bhojpur.
9. The State Of Bihar Through Collector Bhojpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Radha Mohan Pandey, Adv.
For the Respondent/s : Mr. Prashant Pratap, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-07-2017

Heard learned counsel for the parties.

Questioning the legal sustainability of the impugned order by which the learned court below has turned down the prayer of the petitioner for being impleaded as party in the suit filed by the respondent no. 1, the present application under Article 227 of the Constitution of India has been filed.

From the perusal of the plaint (Annexure-1) of T.S. No.



73 of 2001, it transpires that the said suit has been filed by the plaintiff for declaration of title over the suit land on the basis of purchase. It has been the case of the plaintiff that the suit land measuring 1 ½ decimal in plot no. 1479 was never a 'Rasta' but has been wrongly shown in the revisional survey to be the part of the Rasta existing in plot no. 1479. The plaintiff has impleaded respondent nos. 2 to 8 as defendants in the suit making specific allegations against them for infringing the right of the plaintiff over the suit land and asserting their own right over the same. The respondent no. 9 the State of Bihar has been also impleaded as defendant in the suit. It further transpires from the records that the written statement has been filed by the defendant 1st set and 2nd set in the suit contesting the claim and assertions of the plaintiff.

The present petitioner filed an application under Order 1 Rule 10 (2) C.P.C. (Annexure-4) on 26.07.2011 praying for her impleadment as party defendant in the suit. It is the case of the petitioner that there is public Rasta in plot no. 1479 wherein the door of the house of the petitioner, situated over plot no. 1476, opens and she has got no other opening of her house in the public Rasta except the same. The petitioner has asserted to have purchased the adjacent plot no. 1476 by sale deed dated 02.08.2006 (Annexure-3) wherein "Bihar Sarkar Gali" has been mentioned in the southern boundary of



the purchased land.

Learned counsel for the petitioner has submitted that the petitioner has got easementary right to use the suit land as Rasta and this right would be defeated in case of success of the plaintiff in the suit. It has been pointed out that the suit land has been rightly recorded in RS plot no. 1479 as Rasta but the learned court below has wrongly refused to implead the petitioner as party defendant in the suit.

Learned counsel appearing for the other side however, has supported the impugned order.

After considering the submissions and perusal of the materials on record, it is manifest that the plaintiff has filed the suit claiming declaration of his title and consequential reliefs against the defendants over the suit land on the basis that the same has been wrongly included in Rasta over plot no. 1479. The plaintiff has made specific allegation against the defendants in the suit pertaining to collusion, fraud and malafide intention to grab the land of the plaintiff. It is also apparent that the defendants in the suit have filed the written statement contesting the claim of the plaintiff. It, however, appears from paragraph-8 of the present application that the present petitioner has claimed to have acquired an easmentary right of user of the suit land as Rasta. It would be apposite to notice the averment made in paragraph 8 of the application as follows:-



“8. That plaintiff respondent no. 1 has developed a mala fide attitude and he wants to grave (sic. grab) the one and half decimal land of the R.S. plot no. 1479 which land in the revisional survey has rightly been recorded as “Anabad Serb Sadharan” and the learned court below in spite of taking cognizance with regard to entry in R.S. Khatyan as “Anabad Serb Sadharan” has failed to consider the claim of the petitioner who are interested person in this case as her easementary right of using the Rasta is going to be blocked at the instance of plaintiff since in case if plaintiff succeeds in the suit non joinder of petitioner as party defendant will non suit her.”

It is also apparent from the averments made in the present application that the main basis of the petitioner for her impleadment as party in the suit is the acquisition of easementary right to use the suit land as Rasta. Inevitable inference, therefore, is that the petitioner has her independent cause of action against the plaintiff on the basis of her claim of easementary right. This is definitely not an issue between the parties in the suit where only material issue is as to whether the suit land has been wrongly included in the R.S. plot no. 1479.

The ambit and scope of the provision under Order 1 Rule 10 (2) C.P.C. has been noticed by the Apex Court in the case of



Ramesh Hirachand Kundnmal Vs. Municipal Corporation of Greater Bombay, 1992 (2) SCC 524 where it has been held that a person having independent cause of action cannot be made party in the suit. Similar view has been reiterated by the Apex Court in the case of **New Redbank Tea Co. Pvt. Ltd. Vs. Kumkum Mittal, 1994 (1) SCC 402**. In view of the aforesaid dictum of the Apex Court, this Court is unable to align with the submission on behalf of the petitioner that the petitioner should have been impleaded as party in the suit in order to avoid multiplicity of the litigation. It is well settled that the main object of Order 1 Rule 10 (2) C.P.C. is not to avoid multiplicity of litigation though the same may be a desirable consequence of the said provision. The learned court below has rightly concluded that the petitioner is at liberty to file independent suit for protection of her right as claimed.

For the aforesaid reasons and discussions, this Court is not inclined to interdict the impugned order under Article 227 of the Constitution of India. The present application is, accordingly, dismissed.

(V. Nath, J)

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