

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1120 of 2016

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1. Ramanand Sah Son of Late Dasai Sah
2. Awadh Sah Son of Ramanand Sah
3. Nagina Sah Son of Ramanand Sah
4. Lokesh Sah Son of Ramanand Sah All resident of village - Mahodipur,
P.O. Chaïta, P.S. Majhauria, District - West Champaran

.... Petitioner/s

Versus

1. Shambhu Sah Son of Late Sheonath Sah
2. Madan Sah Son of Late Sheonath Sah
3. Ranu Sah Son of Late Sheonath Sah Resident of village - Lakhaura, P.S.
Chanpatia, District - West Champaran
4. Kailani Devi D/o Late Sheonath Sah Wife of Manager Sah Resident of
village - Lakhaura, P.S. Chanpatia, District - West Champaran
5. Binda Devi D/o Late Sheonath Sah, Wife of Jamadar Sah Resident of
village - Motipur, P.S. Bairia, District - West Champaran
6. Indu Devi D/o Late Sheonath Sah, Wife Dadan Sah Resident of village -
Shivaghat, P.S. Gopalpur, District - West Champaran

...Defendants 1st set/Respondents

7. Chandrakala Devi Wife of Raghubir Sah Resident of village - Gularia,
P.O. and P.S. Chanpatia, District - West Champaran

...Defendant 2nd set/Respondent

8. Thakur Sah Son of Late Dasai Sah
9. Khedu Sah Son of Late Dasai Sah Both resident of village - Pipara
Pakari, Tola Dhurwa, P.O. Pipara Pakari, P.S. Bettiah (Mufassil), District -
West Champaran

.... Defendants 3rd set/Respondents

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Appearance :

For the Appellant/s : Mr. Gauri Shankar Thakur

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

3 21-12-2017 Heard the learned counsel for the petitioners and the
learned counsel for the respondents.

The petitioners are the plaintiffs in Title Suit No.81 of
1996. The plaintiffs filed the suit for declaration of gift deed dated
14.11.1977 as voidable and illegal on the ground that Santokha



Devi, the mother of the plaintiff had no right to execute the gift deed in favour of her daughter, Rajkali Devi with regard to the ancestral property. Firstly, the suit was decreed ex parte on 27.09.1997. The defendants filed Miscellaneous Case No.73 of 1997 for setting aside the ex parte judgment and decree passed in Title Suit No.81 of 1996 and the same miscellaneous case was allowed. The defendants appeared and filed written statement. The suit was at the stage of argument but the defendants filed petition under Order I Rule 10 read with Section 151 of the C.P.C. praying therein that Chandrika Sah, son of Jai Govind Sah be made defendants 4th set. The defendants executed a sale deed on 14.06.1986 in favour of Chandrika Sah with regard to land of R.S.P. No.198, khata no.127 and R.S.P. No.132, khata no.81. The learned Additional Munsif allowed the petition to implead Chandrika Sah as defendants 4th set.

The petitioners assailed the order aforesaid and submitted that the plaintiff filed the suit for declaration of the gift deed as illegal as Santokha Devi had no right to execute the gift deed in favour of her daughter, Rajkali Devi but immediately after execution of the gift deed, Rajkali Devi, the sister of the plaintiff No.1 executed the sale deed in favour of Chandrika Sah. Once the gift deed is held to be illegal, Rajkali Devi has got no right to



execute the sale deed. If the deed of gift is held to be illegal, Chandrika Sah would get title over the land purchased by him. It is further submitted that the plaintiff has not made Chandrika Sah a party but the defendants after 16 years of filing the suit filed the petition under Order I Rule 10 to implead Chandrika Sah as defendants 4th set only with a view to linger the suit.

On the other hand, Mr. Sanjay Kumar, learned counsel for the respondents submitted that Order I Rule 10(2) C.P.C. empowers the Court that **“the Court may at any stage of the proceedings, ether upon or without the application of either party, and on such terms as may appear to the court to be just, 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 as party.”** In view of aforesaid provision, it is submitted that the Court may at any stage of the proceeding either upon or even without any application on such term as may appear to it, direct that any of the following persons may be added as party ought to have been joined as plaintiff or



defendant or whose presence before the court may be necessary in order to enable the Court effectually and completely settle the question involved in the suit. The learned counsel for the petitioners placed his reliance in support of his submission on the judgment of the Apex Court reported in **A.I.R. 2015 Supreme Court 1264**. The learned counsel further placed reliance in support of his submission on the judgment of the Supreme Court reported in **AIR 1999 Supreme Court 976(Savitri Devi v. District Judge, Gorakhpur and others)**.

On the submission of both sides, the sole question arises as to whether Chandrika Sah is necessary or proper party in the suit or not? Admittedly, the plaintiff No.1 and Rajkali Devi, defendant No.1 are the brother and sister. Plaintiff filed suit for declaration of gift deed illegal on the ground that Santokhi Devi, the mother of plaintiff and defendant No.1 got no right to execute the gift deed with regard to the ancestral property in favour of her daughter, Rajkali Devi. The plaintiff in a suit being dominus litigis may choose the persons against whom he wishes to litigate and he cannot be compelled to sue a person against whom he does not seek any relief. Even a person who is not a necessary or proper party in a suit cannot be impleaded as party in the suit. Of course, Order I Rule 10(2) is exception to this rule and the Court is



bestowed with the power to implead a necessary or proper party in the suit.

In the present case, the right of a party is based on the deed of gift and Chandrika Sah, whom the defendant wanted to implead as defendants 4th set, did not approach the court ever but when the argument is to be concluded, the defendant filed the petition to implead Chandrika Sah as defendants 4th set but learned Munsif without giving any reason allowed the petition of the defendant impleading Chandrika Sah as defendants 4th set and, therefore, I find that the learned Additional Munsif V, Bettiah, West Champaran has committed jurisdictional error.

Accordingly, the order dated 23.07.2016 is set aside and the civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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