

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.479 of 2016

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1. Ganesh Sao
2. Ashok Sao.
3. Naresh Sao. All sons of Late Mahadeo Sao.
4. Sahdeo Sao Son of Late Lootan Sao. All resident of Village Manhauri,
P.S. Bara Chatti, District- Gaya.

.... Appellant/s

Versus

1. The State of Bihar.
2. Anchal Adhikari, Mohanpur Circle, Gaya.
3. Dwarika Yadav Son of Sri Dhannu Yadav, resident of Village-
Manjhauri, P.S.- Mohanpur, Dist.- Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Birendra Kumar
For the Respondent/s : Mrs. Archana Mennkshi, GP 4

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

4 24-11-2017 Heard the learned counsel for the petitioners and the
learned counsel for the respondent Nos. 1 and 2. Nobody appears
on behalf of respondent No.3.

The petitioners have filed this Civil Misc. petition
against the order dated 13.05.2015 (Annexure-4) passed by
learned Sub-Judge-III, Gaya in Title Suit No. 70 of 2013 by which
the learned Sub-Judge allowed respondent No.3 to be impleaded
as defendant No.3 in the suit.

The plaintiffs filed the suit for declaration of their
occupancy right over the land mentioned in schedule-1 of the
plaint. Admittedly, the land mentioned in schedule-1 of the plaint
stands recorded in the name of State of Bihar as Gair Mazarua
Mokirdar. The petitioners/ plaintiffs claimed their occupancy right
by virtue of the order passed by the Additional Collector in case



No. 22/40/196/57-58 and the petitioners were paying rent. The petitioners filed suit for declaration of title and possession but respondent No.3 filed a petition under Order I Rule 10(2) of the Code of Civil Procedure for impleading him to be party-defendant on the ground that he is owner of adjacent plots and he has got easementary right over the suit land. On such, the learned Sub-Judge allowed the petition of respondent No.3 and directed to implead him as defendant No.3 in the suit.

Plaintiff is master of his own relief and the suit filed by him. If no relief is claimed against a person, who claims to be impleaded in the suit, unless it is shown that he has got interest, he cannot be impleaded as party-defendant. If respondent No.3 has got right of easement, he may file a separate suit but he cannot be impleaded as defendant in the suit filed by the plaintiff in which no relief is sought against him.

Having considered the facts aforesaid, I find that the learned Sub-Judge has committed error in impleading respondent No.3 as defendant No.3 in the suit. Accordingly, the order dated 13.05.2015 (Annexure-4) is set aside.

This Civil Misc. petition is allowed.

(Prabhat Kumar Jha, J)

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