

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23974 of 2013

=====

Ashutosh Kumar Son of Late Dukhi Paswan, Resident Of Village- Paura Pargana Samay, P.S. & District Nawada. At Present Residing At Mohalla- Rajendra Nagar Town Nawada, P.S. & District Nawada.

.... Petitioner/s

Versus

1. Hiralal S/o Late Kishun Singh, Resident of Village- Gonama Pargana Samay, P.S. & District Nawada
2. Babulal Son of Late Kishun Singh, Resident of Village- Gonama Pargana Samay, P.S. & District Nawada
3. Ramyatan Singh Son of Late Matukdhari Singh, Resident of Village- Gonama Pargana Samay, P.S. & District Nawada
4. Baso Paswan Son of Late Karu Paswan, Resident of Village & P.S. Dariyapur Warsaliganj, District Nawada
5. Bishundeo Paswan Son of Baso Paswan, Resident of Village & P.S. Dariyapur Warsaliganj, District Nawada
6. Smt. Rampyari Devi D/o Baso Paswan, Resident of Village & P.S. Dariyapur Warsaliganj, District Nawada
7. Smt. Paro Devi D/o Baso Paswan, Resident of Village & P.S. Dariyapur Warsaliganj, District Nawada
8. Smt. Lalpari Devi D/o Baso Paswan, Resident of Village & P.S. Dariyapur Warsaliganj, District Nawada
9. Smt. Kunti Devi S/o Barho Paswan and widow of Late Bhatu Paswan, Resident Of Village- Panchi, P.S. Barbigha Shekhpura (Now Dead) but her heirs has not been made party till now
10. Kishun Ravidas Son of Late Kesho Ravidas, Resident of Village Gonama, P.S. & Circle Nawada, District Nawada
11. Ugam Ravidas Son of Late Rupan Ravidas, Resident of Village Gonama, P.S. & Circle Nawada, District Nawada
12. Musafir Ravidas Son of Balo Ravidas, Resident of Village Gonama, P.S. & Circle Nawada, District Nawada
13. Umesh Ravidas Son of Somar Ravidas, Resident of Village Gonama, P.S. & Circle Nawada, District Nawada.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : M/s. Alok Kr. Jha and Sheo Kumar Prasad, Advs.

For the Respondent/s : None

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 23-02-2018

This application has been filed for setting aside the



order dated 30.07.2013 passed by the learned Munsif-V, Nawada in T.S. No. 40 of 2003 whereby and whereunder the application filed by the intervenors-respondents to add them as party to the suit was allowed.

2. Heard learned counsel for the petitioner. Nobody appeared for the respondents.

3. It appears that the petitioner has filed the aforesaid T.S. No. 40 of 2003 against the respondents for declaration of his title over the land mentioned in schedule-I of the plaint. The plaintiff has further sought relief for declaration that the revisional survey khatian prepared in the name of defendant no. 1 to 3 with respect to suit land, is wrong, collusive and illegal.

4. The respondent nos. 4 to 13 filed a petition under Order I Rule 10 for impleading them as party to the suit. They claim right over the said land since the time of their ancestor. Their case is that the land in question was Gairmajarua malik. The claim of the plaintiff is that the suit land was recorded in the name of Rai Badshah Bahadur Diwan, who after taking honorarium of Rs.51/- settled the land in favour of Barho Dusadh, the father of the plaintiff in the year 1329 (Fasli) and put him possession thereof. The father of plaintiff came in possession over the said land and in due course, the ex-landlord submitted return in favour of Barho Dusadh. During the



revisional survey operation, the Survey Authorities in collusion with defendants wrongly recorded the name of Hiralal and Babulal in survey khatiyan having equal share. The defendants filed written statement and admitted the claim of the plaintiff. In course of trial, the intervenors filed an application for impleading them as party to the suit. The petitioner filed rejoinder and after hearing, the prayer of intervenors-defendants was allowed and they were impleaded as party to the suit.

5. The learned counsel for the petitioner submits that this is a suit for declaration with respect to revisional survey entry as the land was recorded in the name of Hiralal and Babulal, both sons of Kishun Sah having equal share. The intervenors-defendants never claimed title over the said land rather they have asserted that they were using the land for the purpose of removing skin of dead animals. The intervenors had filed an application before the Collector, Nawada, vide Annexure -6 to this application, praying therein to settle the land in their favour. In the said application, they never asserted their title. The suit of the plaintiff is purely a declaratory suit against the person in whose name the land has been recorded and so the intervenors have no right to get them impleaded as party to the suit. If the intervenors have any interest in the suit land, they are at liberty to file a suit for their relief.



6. On perusal of documents on record I find that the intervenors-defendants in pursuance of notices, appeared but they did not file any counter affidavit denying assertion of the petitioner. The suit of the plaintiff is purely a declaratory suit with respect to revisional survey entry. The land in question is neither recorded in the name of intervenors nor the petitioner has sought any relief against them. The intervenors claim their possession since the time of their ancestor, but there is not a single chit of paper on record to support the claim of the intervenors. The intervenors are at liberty to file a suit for their relief. The court below has erred in impleading them as party to the suit at the last phase of trial.

7. In this view of the matter, the impugned order dated 30.07.2013 passed in T.S. No. 40 of 2003 is set aside and this application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06/03/2018
Transmission Date	

