

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.1454 of 2016**

**In**

**C.R. 258 of 2016**

=====

Ravi Ranjan

.... .... Petitioner/s

Versus

Kameshwar Kumar Saxena & Ors

.... .... Respondent/s

=====

**Appearance :**

For the Appellant/s : Mr. Daya Shankar Prasad Sinha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR**

**JHA**

**ORAL ORDER**

8      20-11-2018              Heard Mr. Daya Shankar Prasad Sinha, learned counsel for the petitioner and Mr. Awadhesh Kumar Mishra, learned counsel for the respondent No.8. Notice was only issued to respondent No.1-plaintiff but respondent No.1 did not appear in spite of service of notice through his lawyer appearing in the court below. Earlier process server reported that respondent No.1 is dead but the petitioner filed petition that respondent No.1 is still alive and thereafter the copy of the notice was served on the counsel appearing on behalf of respondent no.1 in Title Suit No.232 of 2008.

The petitioner-intervener filed this civil miscellaneous petition to set aside the order dated 10.08.2016 passed by Sub Judge III, Patna City in Title Suit No.232 of 2008 by which the petition of the petitioner for review of the order dated 02.02.2016



by which the petition of the petitioner for impleading him as defendant has been rejected.

Learned counsel for the petitioner submits that earlier the petitioner filed petition on 23.02.2015 for impleading him as defendant but the same petition was dismissed on 02.02.2016 on the ground that the petitioner did not file any documents to show that he is either necessary or proper party in the suit. Immediately thereafter, the petitioner filed petition for review of the order dated 02.02.2016 along with three documents viz. (i) certified copy of the khatian with regard to Plot No.2212 and 2216, the subject matter of the suit, (ii) photocopy of the registered deed of Will dated 02.07.1938 executed by Babu Swami Sahay and (iii) photocopy of the sale deed dated 13.09.1915 but the learned Sub Judge rejected the petition for impleading the petitioner as defendant on the ground that the petitioner did not file any recent documents showing title and possession of the petitioner over the property. It is submitted that petitioner is a necessary party. Petitioner inherited the property from his ancestor and he is still in possession of the property.

Learned counsel for the respondent No.8 contending the submission of the learned counsel for the petitioner submits that the petitioner is not at all necessary or proper party. There is no



deed or recent document to show that petitioner inherited the property from his ancestor and he is stranger to the issue to be decided in the suit but I do not find any force in the submission of the learned counsel for the respondent No.8 as on bare perusal of the order impugned, the reasoning given by the learned Sub Judge is not acceptable. Admittedly, the documents filed by the petitioner show that the land was standing in the name of the ancestor of the petitioner. The ancestor of the petitioner executed a registered deed of Will in the year 1938. The petitioner claimed the subject matter of the suit land by virtue of inheritance. Order I Rule 10(2) C.P.C. vests power in the Court that “Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court 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.”

From bare perusal of the aforesaid provision, it appears that the Court, if finds that a necessary party and presence of



whose is necessary for just decision of the case, ordered for adding such party as plaintiff or defendant in the suit. The petitioner filed three documents which show that the land in dispute stands in the name of the ancestor of the petitioner. The rejection of the petition of the petitioner on the ground that petitioner did not file any recent documents showing the lands in his possession is not in my view acceptable. Accordingly, I find that learned Sub Judge has committed jurisdictional error in not allowing the petition of the petitioner for impleading him as defendant. Accordingly, the order dated 10.08.2016 and 02.02.2016 are set aside. The petition of the petitioner for impleading him as defendant in the suit is allowed. Consequently, the civil miscellaneous petition is allowed.

**(Prabhat Kumar Jha, J)**

Saurabh/-

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