

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1315 of 2016**

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1. Sri Thakur Radha Krishna Jee, Braj Mohan Mandir, Champanagar, Tanti Bazar Lane, P.S. Nathnagar, District Bhagalpur through Shevait namely petitioner nos. 2 to 10.
 2. Om Prakash Mishra
 3. Gyan Mohan Mishra both sons of Late Bhola Mohan Mishra
 4. Ashok Mohan Mishra
 5. Kishore Mohan Mishra both sons of Late Sri Mohan Mishra
 6. Neel Mohan Mishra
 7. Manuj Mohan Mishra
 8. Anuj Mohan Mishra
 9. Sashank Mohan Mishra all sons of Late Naresh Mohan Mishra
 10. Manjul Mohan Mishra son of Late Raj Mohan Mishra
- All residents of village Champanagar Abir Mishra Lane, P.O. and P.S. Nathnagar, District Bhagalpur.

... ..Plaintiffs... .. Petitioners

Versus

1. The State of Bihar through the Collector, Bhagalpur.
... ..(Defendant)... .. Respondent 1st Party
2. Md. Irshad Hussain son of Late Wazahat Hussain resident of Mohalla - Nathnagar, Laxmi Narayan Singh Lane, P.S. Nathnagar, Dist. Bhagalpur.
... ..(Intervenor)... ..Respondent 2nd Party

Appearance :

For the Petitioners	:	Dr. Manoj Kumar, Advocate
For the State	:	Mr. Raj Kishore Roy, G.P.18
For Res. No.2	:	Mr. Bishwanath Choudhary, Advocate Mr. Bimlendu Shekhar Thakur,

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT**

Date : 10-09-2018

Heard both sides.

2. The petitioners have filed this civil miscellaneous petition against the order dated 20.09.2016, passed by the learned Sub-Judge-VIII, Bhagalpur in Title Suit No.278 of 2015 by which the respondent no.2 has been made intervenor-defendant.

3. The plaintiffs filed the suit for declaration of title and for correction of the record of rights recorded in the name of Sub-



Judge/State of Bihar with regard to the lands mentioned in the Schedule of the plaint. During the pendency of the suit, the petitioners filed petition under Order I Rule 10(2) of the Code of Civil Procedure for being impleaded as intervenors-defendants on the basis of the facts that respondent no.2 purchased the land of Khata No.584, RSP No.740 from Savitri Devi vide sale deed no.789 dated 23.03.2015. The respondent no.2 further stated that Madan Mohan Mishra and Raj Mohan Mishra, the father and son, sold the land to Savitri Devi on 06.02.1970 vide sale deed no.347 bearing Old Holding No.17, New Holding No.19 situated in Ward No.7 and Savitri Devi came in possession and later on vide sale deed dated 23.03.2015 executed the sale deed in favour of the respondent no.2. The respondent further stated that he is the necessary party in the suit. The learned Sub-Judge-VIII, Bhagalpur after hearing both sides allowed the petition of the intervenor-respondent no.1 without recording a finding with regard to the fact that whether the respondent-intervenor is a necessary or proper party in the suit.

4. The learned counsel for the petitioners submits that admittedly Braj Mohan Mishra executed a deed of Samarpanama in the year 1930 in the name of deities. The descendants of Braj Mohan Mishra fought with each other for management of the



deities and filed Title Suit No.78 of 1969. Title Suit No.78 of 1969 was decreed on compromise. The plaintiffs and the defendants are allowed to manage the Sri Thakur Radha Krishna Jee Braj Mohan Mandir and the properties donated to the deity by Braj Mohan Mishra. The respondent claimed that he purchased the land of Plot No.740 of Khata No.584 from Savitri Devi and Savitri Devi had purchased the land from Madan Mohan Mishra and Raj Mohan Mishra. From the sale deed of Savitri Devi executed by Braj Mohan Mishra and Raj Mohan Mishra, it is evident that Braj Mohan Mishra and Raj Mohan Mishra sold the lands of Old Holding No.17 and New Holding No.19 situated in Ward No.7 of Nathnagar. Savitri Devi sold the land of Plot No.740 of Khata No.584 but there is nothing on record to show that Plot No.740 of Khata No.584 corresponds to Old Holding No.17 and New Holding No.19. It further transpired from the order of the learned Sub-Judge that the learned Sub-Judge has not advert any facts or findings with regard to the question that respondent no.2 is a necessary or a proper party in the suit filed by the plaintiff. It is admitted position that the plaintiff is *dominus litis* and plaintiff is given liberty against whom the plaintiff sought relief but the court at the same time is vested with the power under Order I Rule 10(2) of the Code of Civil Procedure to make a party who is either



necessary or a proper party in the suit. The necessary party is who in whose absence no effective and complete relief can be granted and the proper party is the presence of whom is necessary for the court to decide the dispute between the parties but the learned Sub-Judge has not recorded any finding whether the respondent no.2, the intervenor-defendant, is necessary or a proper party, therefore, I find that the learned Sub-Judge has committed jurisdictional error in allowing the petition of the respondent no.2, intervenor-defendant, to be impleaded as defendant in the suit. Accordingly, the order dated 20.09.2016, passed by the learned Sub-Judge-VIII, Bhagalpur in Title Suit No.278 of 2015 is set aside. The matter is remitted to the learned Sub-Judge to pass order afresh in accordance with law and after recording a finding after hearing the both sides whether the respondent no.2, intervenor, is a necessary or a property party in the suit.

5. The civil miscellaneous petition is allowed accordingly.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2018
Transmission Date	NA

