

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.30 of 2016**

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1. Arfa Khanam Wife of late Yazdan Ahmad Khan
 2. Kamran Ahmad Khan Son of late Yazdan Ahmad Khan
 3. Rabia Laka Khanam D/o of late Yazdan Ahmad Khan, wife of Abid Khan
 4. Fariza Laka Khanam Daughter of late Yazdan Ahmad Khan, wife of Faiyaz Ahmad Khan
Serial No. 1 to IV are resident of Balthi Maheshpur, Via A.G. Bazar, P.S. Kursala, District Katihar. 854101.
 5. Sabiha Khanam Daughter of late Yazdan Ahmad Khan, wife of Jamil Khan, Resident of Village- Sundarpur, P.O. & P.S. Pirpaithi, District Bhagalpur.
 6. Imran Ahmad Khan Sons of late Burhan Khan Both Resident of Village- Balthi Meshpur, P.S. Kursela, District Katihar.

.... Petitioner/s

Versus

1. The State of Bihar , through Collector Katihar, District Katihar.
2. The Block Development Officer, Khursela Anchal, P.S. Khursela, District Katihar.
3. The Circle Officer, Khursela Anchal, P.S. Khursela, District Katihar.

---Respondents

4. Rakesh Kumar Singh Son of late Mithleshwar Prasad Singh
5. Santanu Kumar Singh Son of Sri Pramod Kumar Singh Serial no. 4 and 5 are resident of Village Balthi, Masheshpur, P.S. Kursela, District Katihar.

.... Interveners-Respondent/s

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Appearance :

For the Appellant/s : Mr. Syed Qaisar Hasan

For the Respondent/s : Mr. Anil Kumar- GP23

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

ORAL ORDER

6 24-01-2018

Heard both sides.

The petitioners have filed this petition to set aside the order dated 26.02.2016 passed by learned District Judge, Katihar in Title Appeal No.1 of 2015.

The petitioners are the plaintiffs of Title Suit No.106 of



2001. The petitioners filed the suit for declaration of title on the ground that the lands belonged to their ancestor but the same was wrongly entered into the name of State of Bihar, Gairmajarua Aam. The suit was decreed. The State of Bihar filed Title Appeal No.1 of 2015. During the pendency of the appeal, the respondent Nos.4 and 5 filed petition under Order 41 Rule 20 of the C.P.C. to be made intervener-respondents in the appeal and the learned District Judge allowed the petition. The petitioner being aggrieved by the aforesaid order moved before this court.

The learned counsel for the petitioners submits that Order 41 Rule 20 C.P.C. is meant for such a person who was party to the suit and that person is not made respondent in the appeal. In that event, the Court has got discretion. If it appears to the Court, the Court may adjourn the hearing and direct that such person be made respondent but the respondent 2nd set-interveners were not party to the suit and, therefore, the order of the learned District Judge is illegal and not sustainable.

On the contrary, learned counsel for the respondent Nos.4 and 5 submits that the petitioners have no right over the lands. The land is standing in the name of State of Bihar as Gairmajarua Aam. They are using the land as their egress and ingress, therefore, they are necessary party.



The sole question falls for consideration “whether the order of the District Judge suffers from any illegality making the respondent Nos.4 and 5 as respondent in the appeal under Order 41 Rule 20 C.P.C?”

Order 41 Rule 20 C.P.C. reads thus:

“20. Power to adjourn hearing and direct persons appearing interested to be made respondents.- Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.”

This provision appears to be meant for such person who was party to the suit but that person has not been made respondent in the appeal and the Court thinks it that person is interested in the result of the appeal but in the present case, the respondent Nos.4 and 5 were not the party to the suit when the State of Bihar filed appeal, respondent Nos.4 and 5 filed petition for impleading them as intervener-respondents on the basis that they got right of easement over the land. The respondents, if so advised, may file separate suit claiming their rights of easement but they cannot be made intervener-respondents in this appeal under Order 41 Rule 20 C.P.C.

Therefore, I find that the learned District Judge has



committed jurisdictional error in allowing respondent Nos.4 and 5 to be impleaded as intervener-respondents.

Accordingly, the order dated 26.02.2016 is set aside and this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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