

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13599 of 2014

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1. Sajan Kumar Banka @ Sajan Banka Son of Late Ram Niwas Banka
resident of Village Nawadih, Jhajha Bazaar, P.S. Jhajha, Distt. Jamui.

.... Petitioner

Versus

1. Baldeo Prasad Yadav
2. Bachandeo Yadav Both Sons of Late Mathura Yadav
3. Meena Devi
4. Sunita Devi Both daughters of Late Lakhan Lal Burnwal all resident of
Babudih, Jhajha Bazaar, P.S. Jhajha, Distt-Jamui.
5. Awadh Pd. Burnwal
6. Suchit Kumar
7. Subhash Kumar Burnwal @ Soni
8. Sunil Kumar Burnwal
9. Anil Kumar Burnwal all Sons of Late Lakhan Lal Burnwal
10. Usha Devi
11. Poonam Devi
12. Seema Devi
13. Manjula Devi All daughters of Late Lakhan Lal Burnwal All resident of
near Jhajha Police Station, P.S. Jhajha, Distt. Jamui.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan Singh, Advocate
For the Respondent/s : Mr. Ajit Kr. Singh, Advocate
Mr. Subodh Kr. Barnwal, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

11 19-03-2018 This writ application has been filed for setting aside the

order dated 07.06.2014 passed by learned Additional Munsif-III,

Jamui in Title Suit No.02 of 2003 whereby and whereunder the

prayer of the petitioner to implead him as party to the suit was

rejected.

2. Heard learned counsel for the petitioner and the
respondents.



3. It appears that the respondents 1st set are heirs of one Mathura Yadav, who had filed the aforesaid Title Suit No.02 of 2003 against Lakhan Lal Barnwal. The respondents 2nd set are heirs of said Lakhan Lal Barnwal. The original plaintiff had filed the suit for declaration of his title and confirmation of possession over 3 decimal of land of Plot No.1595 and 1 decimal land of Plot No.1594.

4. The petitioner intervened into the matter and filed an application for being impleaded as party to the suit. The claim of the petitioner is that his grand father, namely, Late Ishwar Banka took settlement of 11 decimals of land of Plot No.1595 from ex-landlord Gidhaur Estate. The nature of the land was 'Gair majarua malik'. After settlement, the ancestor of the petitioner came in possession and constructed shop and residential house over the same and some portion of said land remained vacant. In course of time, the land was partitioned between the co-sharers and the petitioner got 4 ½ decimals land in his share. The respondents 2nd set fraudulently and illegally got jamabandi created with respect to 2 decimals land in their name. The respondents 2nd set allegedly encroached over 2 decimals of land of petitioner for which a proceeding under Section 144 of the Cr.P.C. was initiated. The said proceeding was converted into



proceeding under Section 145 of the Cr.P.C. and the land in question was declared in possession of the petitioner. In course of jamabandi proceeding, vide Case No.82 of 2012-2013, this petitioner got knowledge about the pendency of present suit and thereafter he filed present application for impleading him as party to the suit. The petitioner being in possession of the said land is necessary party and so the impugned order refusing to implead the petitioner is not sustainable.

5. Learned counsel for the respondents, on the other hand, submits that the plaintiff has filed this suit claiming his title on the basis of settlement. The ex-landlord had settled the suit land in favour of the father of the respondent in the year 1928 and since then the land is being utilized by the family of the respondents. The respondents have got their shop over portion of R.S.P. No.1594 and they are residing along with their family members in the said house. The defendant Lakhan Lal Barnwal started claiming the said land on the basis of forged and fabricated sale deed dated 24.03.1969 purported to be executed by one Dwarika Das. The defendant did not take possession over any portion of suit land and so he filed Eviction Suit No.05 of 1974 against the plaintiff-respondent. The said suit was dismissed for non-prosecution. The real dispute is between the respondents 1st



set and 2nd set. The intervener is not necessary party to the suit and so the court below has rightly rejected the prayer of the petitioner.

6. On going through the writ application as well as the documents annexed with the application, I find that the intervener petitioner is claiming land on the basis of settlement but he has not filed any paper in support of his claim. The learned counsel referred a report of Advocate Commissioner which has been filed before the court below. On perusal of the said report, it appears that Plot Nos.1594 and 1595 is a big plot and is recorded as Gair majarua malik in Khatian. The plaintiff claims only 3 decimals land of Plot No.1594 and 1 decimal land of Plot No.1595. The intervener, on the other hand, claims the land by virtue of settlement in the name of his grandfather to the extent of 9 decimals. It is not clear from the report of Advocate Commissioner as to from which side the intervener is claiming. The respondents 2nd set are also claiming title over the said land for which the respondents 1st set have filed Title Suit No.02 of 2003. The court below considering the land dispute between the respondents has rightly rejected the prayer of the intervener. The intervener cannot get his title declared in a suit filed by respondents 1st set against the respondents 2nd set.

7. In view of above facts I do not find any jurisdictional



error in the impugned order whereunder the court below has refused to implead the intervener as party to the suit. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

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