

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1309 of 2016

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1. Baidyanath Sharma s/o Late Rooplal Sharma resident of Hospital Road, P.O. and P.S. Kishanganj, District Kishanganj.

.... Appellant/s

Versus

1. Nirmal Kanti Das s/o Late Beni Madho Das resident of Hospital Road, P.O. and P.S. Kishanganj, District Kishanganj.
2. The State of Bihar through Collector, Purnia.
3. The Circle Officer, Kishanganj, Block Veria Dangi, Kishanganj, District - Purnia.
4. The Union of India through the General Manager, N.F. Railway Maligown, Gauhati.
5. The Divisional Engineer, N.R. Railway, Katihar, District - Katihar.
6. The Commissioner of Municipality, through its Special Office at Kishanganj Municipality.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey
For the Respondent No. 2, 3,6 : Mr. MD. Khurshid Alam- AAG12
For the respondent No. 4, 5 : Mr. Anil Kumar Sinha
For the respondent No.1 : Mr. Arbind Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 10-09-2018

Heard the learned counsel for the petitioner, the learned counsel for the respondent No.1, the learned counsel for the respondent No. 2, 3, 6 and learned counsel for the respondent No. 4 and 5.

The petitioner has filed this Civil Misc. petition against the order dated 22.07.2016 passed by the learned 2nd Additional District Judge, Kishanganj in Title Appeal No. 08 of 1999 by which the petition of the petitioner filed under Order 1 Rule 10 (2) of the



Code of Civil Procedure for impleading him as respondent has been rejected.

The brief facts, which are admitted and relevant for the disposal of this Civil Misc. petition, are that petitioner, Baidyanath Sharma, filed Title Suit No. 25 of 1988 for correcting the wrong entry in the survey records with regard to plot Nos. 85, 89 and 91, Khata No. 33. The suit was decreed on 04.07.1997. The State filed Title Appeal No. 99 of 1997 which was also dismissed on 21.05.2001. The petitioner of the present case filed Title Suit No. 37 of 2002 with regard to plot No. 91, Khata No. 33 against the State of Bihar. Nirmal Kanti Das, respondent No. 1, filed petition for his impleadment in the suit but his petition was dismissed. This court in Civil Revision allowed the petition of Nirmal Kanti Das and on such he was made defendant in the suit. Title Suit No. 37 of 2002 was decreed on 13.03.2013. Subsequently, Nirmal Kanti Das filed Title Appeal No. 26 of 2013 which has already been decided on the basis of which Nirmal Kanti Das, the petitioner of Civil Misc. No. 1692 of 2017, which was ordered to be heard along the present Civil Misc. petition, has withdrew Civil Misc. No. 1692 of 2017 on the ground that Title Suit No. 26 of 2013 preferred by him has already been decided.

The learned counsel for the petitioner submits that the petitioner filed a petition under Order 1 Rule 10 of the C.P.C. to be



impleaded as respondent in Title Appeal No. 8 of 1999 as the petitioner is also a necessary party. Nirmal Kanti Das filed Title Suit No. 10 of 1989 which was dismissed on 25.08.1998. Nirmal Kanti Das also filed Title Appeal No. 8 of 1999 against the judgement and decree passed in Title Suit No. 10 of 1989. Therefore, the petitioner is also a necessary party and his interest is involved in plot No. 91. It is submitted that with regard to same plot Title Suit No. 37 of 2002 was filed in which Nirmal Kanti Das was impleaded as defendant and the suit was decreed in favour of the petitioner. Nirmal Kanti Das also filed Title Appeal No. 26 of 2013 which has already been decided. The learned Additional District Judge dismissed the petition of the petitioner solely on the ground that petitioner filed petition for his impleadment at a very belated stage.

Contending the submission of the learned counsel for the petitioner, Mr. Arbind Kumar Singh, the learned counsel for respondent No.1, tried to persuade this court that since the petition is filed at a very belated stage, the Additional District Judge has rightly dismissed the petition of the petitioner but I find that since plot No. 91 of Khata No. 33 was the subject matter of Title Suit No. 37 of 2002 as well as the subject matter of Title Suit No. 10 of 1989 and Nirmal Kanti Das was allowed to contest the Title Suit No. 37 of 2002 and he lost the suit thereafter Nirmal Kanti Das filed Title Appeal No. 26 of



2013, which has already been decided. Nirmal Kanti Das earlier filed Title Suit No. 10 of 1989 and the subject matter of the suit was plot No. 91 Khata No. 33. The petitioner had no knowledge about the pendency of Title Suit No. 10 of 1989, which was dismissed, and thereafter Nirmal Kanti Das filed Title Appeal No. 8 of 1999 which is still pending.

In this view of the fact, I find that petitioner is a necessary party and he wants to contest the appeal without adducing any additional evidence, save and except, the judgement and decree passed by different courts with regard to the same land. Accordingly, the order dated 22.07.2016 passed in Title Appeal No. 8 of 1999 is set aside and the petition of petitioner for his impleadment as respondent in Title Appeal No. 8 of 1999 is allowed. This Civil Misc. petition is, thus, allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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