

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14420 of 2010

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Hemraj Yadav Son of Mani Yadav resident of village- Kanduah, Police Station-
Barachatti, Thana No.221, Pargana Sherghati, Post Office- Babhandeo, District-
Gaya. Petitioner/s

Versus

1. Sahodari Devi W/o Late Bijli Mistri,
 2. Mohan Mistri S/o Late Bijli Mistri,
 3. Lakhan Mistri S/o Late Bijli Mistri,
 4. Rohan Mistri S/o Late Bijli Mistri,
 5. Shanti Devi D/o Late Bijli Mistri,
 6. Ishwar Devi D/o Late Bijli Mistri,
 7. Sumitra Devi D/o Late Bijli Mistri,
 8. Sona Devi, all daughters of late Bijli Mistri,
Respondent nos. 1 to 8 are residents of village- Kenduah, Police Station-
Barachatti, Thana No. 221, Post Office- Babhandeo, District-Gaya.
 9. Kunti Devi W/o Late Ram Sharan Yadav,
 10. Manoj Yadav S/o Late Ram Sharan Yadav,
 11. Sanoj Yadav S/o Late Ram Sharan Yadav,
 12. Samodh Yadav S/o Late Ram Sharan Yadav,
Respondent nos. 9 to 12 are resident of village-Kenduah, P.S.-Barachatti,
Thana No.- 221, Pargana- Sherghati, P.O.- Babhandeo, Distt- Gaya.
.... Respondent/s
- =====

Appearance :

For the Petitioner/s : Mrs. Sushmita Mishra, Advocate
Mr. Suraj Narayan Shah, Advocate
For the Respondent/s : Mr. Arun Kumar Sinha, Advocate
Mr. Sanjay Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 08-08-2018

Petitioner before this Court is one of the plaintiffs of
Title Suit No. 92 of 2002 pending in the court of Additional Munsif-II,
Sherghati, Gaya. He has filed this application for setting aside the order
dated 27.07.2010 whereby and whereunder the prayer of the plaintiff-
petitioner to implead Mahabir Mistry as defendant to the suit under the
provision of Order 1 Rule 10 read with section 151 of Code of Civil
Procedure was rejected.



2. Heard both sides and perused the record.

3. The plaintiff-petitioner along with other co-plaintiffs filed the aforesaid suit for declaration of their right, title and interest in the suit land measuring 0.4 acre comprised in revisional survey plot no. 975 corresponding to cadastral survey plot no. 267. The plaintiff-petitioner has further sought relief for decree of recovery of possession over the said land. At the fag end of trial, it was detected that one of the recorded tenant in whose name survey plot stands recorded, has not been impleaded as party to the suit. The said land was recorded in the names of Bijli Mistry and Mahabir Mistry. Out of them, the suit has been filed only against the heir of one of the recorded tenants namely Bijli Mistry.

4. It has been submitted that the ancestor of petitioner-plaintiff had given the disputed land to Bijli Mistry for performing the work of blacksmith as there was no blacksmith in the village. The said land was recorded in the names of Bijli Mistry and Mahabir Mistry. The plaintiff-petitioner had no knowledge about the survey entry also in the name of Mahabir Mistry and so he was not impleaded as party to the suit.

5. The learned counsel for the respondents on the other hand submitted that the suit was filed in the year 2002. The defendants filed their written statement in the year 2004. They have specifically stated that the said land has been recorded also in the name of Mahabir Mistry. In spite of the said pleading, the plaintiff did not implead the said



recorded tenant as party to the suit and so the suit itself is bad for non-joinder of necessary party. The evidence of both the parties has been recorded and the suit is pending for argument and so the prayer of petitioner has rightly been rejected.

6. On going through the case of both the parties and impugned order, I find that the suit land was recorded in the name of two brothers. Out of them, heir of only one brother has been impleaded as party to the suit. This fact stands admitted by the defendants-respondents. The plaintiff-petitioner has filed the aforesaid suit for declaration of his right, title and recovery of possession over the land which stands recorded in the name of Mahabir Mistry also. The said Mahabir Mistry is necessary party to the suit and no effective judgment can be passed in his absence.

7. In view of above discussions, the impugned order refusing to implead Mahabir Mistry as defendant to the suit is set aside. This writ application is allowed subject to payment of cost of Rs. 5000/- to the contesting defendants before the court below.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.08.2018
Transmission Date	N/A

