

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1445 of 2016

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1. Md. Reyaz Quraishi son of Md. Mozim Ansari.
2. Md. Irshad Ansari son of Late Abdul Halim Ansari. Both are resident of Village- Jadua Saidpur Idrish Town Police Station, District- Hajipur at Vaishali.

.... Petitioner/s

Versus

1. Md. Yakub Ansari.
2. Md. Abbas Ansari.
3. Md. Ayub Ansari.
4. Md. Rustam Ansari.
5. Md. Jahangir Ansari All are sons of Late Yusuf Ansari.
6. Md. Salim Ansari.
7. Md. Shaim Ansari Both are sons of Md. Usman Ansari.
8. Md. Mainuddin Ansari.
9. Md. Jainuddin Ansari.
10. Md. Saimuddin Ansari.
11. Md. Kalamuddin Ansari. All are sons of Late Sahid Ansari.
12. Md. Moid Ansari son of Late Jahur Ansari.
13. Md. Khurshid Ansari
14. Md. Shamim Ansari
15. Md. Kalim Ansari All are sons of Late Rashid Ansari. All are resident of Village- Jadua Saidpur Idrish, Town Police Station, District- Vaishali at Hajipur.
16. The State of Bihar through the Collector, Hajipur, Vaishali.
17. The Circle Officer, Hajipur, Vaishali.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajib Ranjan Jha
For the Respondent/s : Mr. Sajid Salim Khan- Sc25

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

3 06-11-2018 Heard learned counsel for the petitioners, learned counsel for the respondent Nos.1 to 15 and the learned counsel for the State-respondent Nos.16 and 17.

The petitioners-intervenors filed this civil miscellaneous petition to set aside the order dated 18.07.2016 passed by Sub



Judge I, Hajipur, Vaishali in Title Suit No.1255 of 2014 by which the Sub Judge I, Vaishali rejected the petition of the petitioners filed under Order I Rule 10(2) of the C.P.C. for impleading the petitioners as interveners-defendants in the suit.

The plaintiffs filed the suit for declaration of right, title and possession over the suit land described in schedule I of the plaint. The case of the plaintiff is that the lands mentioned in schedule of the plaint are the exclusive property of the petitioners but the same was wrongly recorded in the name of State of Bihar. The mosque situated on the plot is a private masjid of the family of the petitioners. In the remark column of the record of right, it is stated that the land is in possession of Mutwali Juman Ansari. The defendant-State of Bihar filed written statement contesting the suit and stated that Masjid is situated on the land in question and the public at large are offering prayer. The petitioners-interveners filed petition under Order I Rule 10(2) C.P.C. for impleading them as defendants on the ground that the petitioners are the elected officials of the managing committee of the mosque situated on the land and election is held at every five years to manage the affairs of the mosque but the plaintiff filed the suit in order to grab the mosque. The private mosque is a foreign and strange word in the Islamic religion. In every mosque, the people of the vicinity of



Islam community have got right to offer prayer. In this view of the fact, petitioners are necessary party to contest the suit but the learned court below without taking into consideration the relevant facts rejected the petition of the petitioners on the ground that the election was held on 25.04.2011 and the next election must have been held after five years but the petitioners did not file any petition showing they have been elected as the representative of the mosque.

Learned counsel for the respondents 1st set-plaintiffs submits that mosque is the exclusive property of the respondents. The land on which mosque is situated was wrongly recorded in the name of the State of Bihar and that is why the respondents filed the suit for declaration of title and confirmation of possession.

Having considered the submissions of both sides and on perusal of record, I find that the land is admittedly mentioned in the name of the State of Bihar and in the remark column of the record of rights, it is mentioned that the land is in possession of Mutwali Juman Ansari. The plaintiffs did not seek any relief in the plaint for correction of the record of rights nor made any averment that the record of rights of the land and the mosque situated thereon was recorded in the name of their ancestors. In the Islamic religion, the mosque is meant for offering prayer for public at



large. The mosque cannot be considered to be the family property. The affairs of the mosque can be managed by the Mutwali and the trustee and the person who donated the land may appoint the Mutwali according to his own wish. Order I Rule 10(2) C.P.C. vests power on the Court that Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Therefore, it appears that in view of the averments made by the plaintiffs, admittedly, the mosque is situated on the land on which the plaintiff claims right, title and possession, is recorded in the name of the State of Bihar. In the mosque, the people at large have got right to offer prayer. The petitioners who are the people of the vicinity of the mosque have got every right to contest the suit and preserve the nature of the mosque. Therefore, I find that learned Sub Judge has committed jurisdictional error by dismissing the petition of the petitioners for their impleadment in



the suit as defendants. Accordingly, the order dated 18.07.2016 is set aside. This civil miscellaneous petition is allowed. Petition filed by the petitioners is allowed and the petitioners are impleaded as defendants in the suit.

(Prabhat Kumar Jha, J)

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