

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1277 of 2016

- =====
1. Dadan Sharma, Son of Late Amirchand Sharma,
 2. Awadhesh Sharma, Son of Late Nand Bihari Sharma, Resident of Village and P.S.- Suryapura, District- Rohtas.

.... Petitioners

Versus

1. The State of Bihar, through District Magistrate, Rohtas at Sasaram.
2. Anchaladhikari Suryapura, Rohtas.
3. Kanhaiya Sharma
4. Madan Sharma Both sons of Late Ram Govind Sharma Both residents of Village and P.S.- Suryapura, District- Rohtas.
5. Prabhu Sharma, son of Late Amirchand Sharma.
6. Ram Parvesh Sharma, Son of Late Amirchand Sharma, Both residents of Village and P.S.- Suryapura, District- Rohtas.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Surendra Kumar Mishra

For the Respondent/s : Mr. RAJ KISHORE ROY- GP18

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date: 25-04-2018

Heard both sides.

The petitioners have filed this Civil Miscellaneous petition against the order dated 13.06.2016 passed in Title Suit No.04/2012 by learned Munsif, Bikramganj, by which, the petition of the respondent no.3 and 4 to implead them as defendants has been allowed.

The petitioners filed the suit for declaration of title and confirmation of possession and also for correction of the record of right in the name of State of Bihar with respect to the suit property. The petitioners further prayed that the suit land was wrongly recorded in the name of State of Bihar and the entry made in the record of right be accordingly corrected. During pendency of the suit, the respondent



no.3 and 4 namely Kanhaiya Sharma and Madan Sharma filed petition that the Revisional Khata No.712, plot no.1398, area 5 decimal situated at village Suryapura, P.S. No.332 were recorded in Khatian as Anwad Bihar Sarkar. The intervener got lands of the plot no.1399 situated by the side of plot no.1398 and they are using the land of 1398 as their right of easement for their egress and ingress. A case was also initiated under Land Dispute Redressal Act before the D.C.L.R., Bikramganj, Rohtas in Land Dispute Redressal Case No.20/2011. The intervener filed appeal before the Commissioner against the order of D.C.L.R. The D.C.L.R. rejected the claim of the right of easement of the intervener but the learned Munsif, Bikramganj allowed the petition of the intervener.

Learned counsel for the petitioners submits that from the order of the learned Munsif, Bikramganj, it would appear that the learned Munsif without taking into consideration the facts that the intervener is not at all necessary party in the suit filed by the petitioners/plaintiffs. The plaintiffs filed the suit for declaration of title and confirmation of possession and correction made in the entry of name in the record of rights. It is prerogative of the petitioners to choose the defendants, unless the plaintiffs seek relief against the defendants, the defendants are not necessary party. Therefore, the order is illegal.



On the contrary, learned counsel for the respondents submitted that the petitioners are also interested parties and their right shall be affected.

From the petition of the respondent no.3 and 4, the interveners itself, it appears that defendants claim their right of easement over plot no.1398 but their right was rejected by the D.C.L.R. The plaintiffs filed the suit for declaration of title and confirmation of possession and correction in the record of right with regard to plot no.1398, the plaintiff did not seek any relief against the intervener nor the intervener appeared to be necessary party in the suit. Thus, I find that the learned Munsif has committed jurisdictional error in allowing the petition of the respondent no.3 and 4.

Accordingly, the order dated 13.06.2016 passed in Title Suit No.04/2012 is set aside and the Civil Miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

