

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.177 of 2019**

1. Bihari Ahir @ Bihari Singh, son of Late Ramanand Ahir.
2. Bacha Singh, S/o Late Chanderdip Ahir.
3. Baban Singh S/o Late Babu Lal Singh
All residents of Village- Partap, Harkhu Tola, Police Station- Sahar, District-
Bhojpur.

... .. Intervenors-Petitioners

Versus

1. Kapil Singh, S/o Late Ram Prasad
2. Upender Singh, S/o Late Sipahi Singh
3. Lal Mahar Singh, S/o Late Suraj Singh
4. Manager Singh S/p Late Ram Ashre Singh
5. Ram Bachan Singh @ Bhukhi Singh, S/o Late Lalchand Singh
All residents of Village- Perhap, Tola- Harkhu, Post- Kharam Kala, District-
Bhojpur.

... ..Plaintiffs-Respondents

Appearance :

For the Petitioners : Ms. Mallika Mazumdar, Advocate
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 28-03-2019

Heard learned counsel for the petitioners.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for setting aside the order dated 11.09.2018 passed in Title Suit No. 486 of 2016 by the learned Sub-Judge-VII, Arrah (Bhojpur) whereby the application filed under Order 1 Rule 10 of the Code of Civil Procedure (for short 'the Code') by the petitioners for impleadment as defendant has been rejected.

3. Learned counsel appearing for the petitioners



submitted that the court below has erred in not taking into consideration the documents, such as, continuous Khatiyani, rent receipt, copy of the return filed by the zamindar etc. while passing the impugned order. She has submitted that the partition suit filed between the plaintiff and the defendant is collusive one. The non-impleadment of the petitioners as a defendant in the suit would cause serious prejudice to the right of the petitioners.

4. The short facts of the case, as would appear from the record, is that a partition suit vide Title Suit No. 486 of 2016 was filed by heirs of late Banshropan Yadav i.e. Ram Bachan @ Chutki Singh against Kapil Singh, Sipahi Singh (dead), Lal Mohar and Mangru Singh. In the said title suit, the petitioners filed an application under Order 1 Rule 10 of the Code for impleadment as defendants. The petitioners claim before the court below was that they have got a part of suit land in 1912. The partition suit relates to certain plots, which belonged in the name of the ancestor of these petitioners. Thus, if they are not arrayed as party, there will be multiplicity of the proceeding and they will suffer loss.

5. While contesting the application of the petitioners preferred under Order 1 Rule 10 of the Code, the



plaintiffs argued that the proposed intervenor-defendant did not have any *locus* to contest the suit. The name of the intervenor-defendant was neither mentioned in the record of rights nor they had any document pertaining to possession. The trial court after hearing the parties came to the conclusion that the petitioners are neither necessary nor proper parties. Hence, vide order dated 11.09.2018, the prayer of the petitioners was rejected observing as under:-

“Now applying the law to the facts of the case, the court finds that the proposed intervenor-defendant has asserted that the common ancestor of the plaintiff and defendant had sold a part of the suit-land to the petitioner’s ancestors by a sale deed in 1912. The petitioner has submitted a copy of the sale-deed to show his claim. But he has failed to submit any other document to support his claim on the suit-land.

Now, the court finds the following:

- (i) First, though the petitioner claims that his ancestors bought the land in 1912, but the record of rights i.e. the cadestral survey *khatiyān* for the suit-land stands in the name of common ancestors of the plaintiff and the defendant.
- (ii) Second, the revisional survey *khatiyān* for the suit-land also stands in the name of the plaintiff and the defendant. There is no



mention of the petitioners, even in the possessory column of the revisional survey khatian. It appears unacceptable to this court that the “successive survey authorities” would have continuously omitted the petitioner’s name, in the possessory column or in the ownership column.

(iii) Third, even assuming that the sale-deed was rightly executed in favour of the plaintiff, then there must be a corresponding entry in any of the revenue records of the government. The petitioner has neither submitted any rent receipt, nor any mutation order, or even the zamindari return, showing petitioner’s name, or his ancestor’s name, in any of those records. Petitioner has also failed to show a chit of paper showing his possession over the suit-land.

(iv) Fourth, here the petitioner has also submitted a detailed written argument, but the petitioners have failed to mention any of his documents which could show that they were in possession over the part of the suit-land, as claimed. On the contrary, the plaintiff and the defendant have filed rent receipts extending over a period of time till date.

(v) Fifth, the petitioners had challenged the survey entry for the suit-land before the chakbandi officials but the chakbandi officer too dismissed the petitioner’s claim.



Now going by the discussions made in the order, the court feels that the petitioner appears to have no connection with the suit land and they are neither necessary party nor they have any locus. It appears just a ploy to delay the process. So the petition of the proposed intervenor-defendant is rejected.”

6. It would evident from the aforesaid order that in the cadestral survey *khatiyan* for the suit land, names of the petitioners or their ancestors do not find place. There is no mention of the name of the petitioners even in the possessory column of the revisional survey *Khatiyan*. The revisional survey *Khatiyan* in the suit land also stands in the name of the plaintiff and the defendant. There is no corresponding entry in any of the revenue records of the government after the execution of alleged sale deed in favour of the petitioners’ ancestors. The petitioners also failed to submit any rent receipt or mutation order or even the zamindari return showing either their name or their ancestors name in those records.

7. In absence of any corroborative material, the court below rightly came to the conclusion that the petitioners have no connection with the suit land and they are neither necessary party nor they have any *locus* in the case. In course of argument, learned counsel for the petitioners has fairly admitted



that the documents except the sale deed of the year 1912 were not filed by the petitioners in the court below. In absence of any supporting document to establish the relationship of the petitioners with the suit land, if the court below has rejected the application filed by the petitioners under Order 1 Rule 10 of the Code, no illegality, irrationality or impropriety can be found with the order impugned. The same does not suffer from any jurisdictional error.

8. In that view of the matter, in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, I am not inclined to interfere with the order impugned.

9. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/R.Ranjan-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

