

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.198 of 2019

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Sunayana Devi aged about 45 years (F) W/o Raju Prasad @ Raj Kumar Prasad Resident of Village-Dhaniapatti, Motihari, P.O. and P.S. Motihari, Dist.-East Champaran

... .. Plaintiff-petitioner

Versus

1. Kavita Devi aged about 50 years (F) w/o Tribhuvn Singh Resident of Village-Mahuawa, P.S. and P.O.-Pipra, Dist.-East Champaran
2. Kunwar Nireen Bhushan aged about 37 years (M) S/o Ram Pukar Singh, resident of Village-Mothiya Mopat, P.O. and P.S. Lakhanra, Dist.-East Champaran
3. Kunwar Mani Bhushan aged about 35 years (M) S/o Ram Pukar Singh Resident of Village-Mothiya Mopat, P.O. and P.S.-Lakhanra, Dist.-East Champaran
4. Sawan Pratap Singh aged about 35 years (m) S/o Tribhuwan Singh Resident of Village-Mahuawan, P.O. and P.S. Pipra, dist.-East Champaran
5. Tribhuwan Singh aged about 62 years (M) S/o Sitaram Singh Resident of Village-Mahuawan, P.O. and P.S. Pipra, Dist.-East Champaran
6. Satya Narayan Singh aged about 70 years (M) S/o Singhasan Singh Resident of Village-Mjhariya, P.O.-Belaya, P.S.....Dist.....East Champatran
7. Md. Safique aged about 82 years (M) S/o Late Md. Habib Resident of Village/Mohalla-Misphot, P.S. and P.S. Motihari Town, Dist.-East Champaran
8. Basanti Devi aged about 78 years (F) W/o Late Mahadeo Prasad Resident of Village-Talipatti, P.S. Motihari Town, Dist.-East Champaran

... .. Respondents

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Appearance :

For the Appellant/s : Mr.Nagendra Upadhyay
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 04-04-2019

Heard learned counsel for the petitioner and perused the material on record.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting



aside the order dated 10.12.2018 passed by the learned Civil Judge (Junior Division), Sadar in Title Suit No. 103 of 1995 corresponding to CIS (T.S.) 5058 of 2016 with regard to her whereby the petition dated 23.07.2016 filed by the plaintiff-petitioner under order 1 rule 10(1) of the Code of Civil Procedure (for short 'CPC') has been dismissed.

3. Learned counsel for the petitioner has submitted that Shami Ahmed is a necessary party in the suit in question, but inadvertently, the petitioner could not implead him as defendant. Later on, as it was detected that he is a necessary party, a petition under order 1 rule 10(1) of the CPC for incorporating Shami Ahmed as defendant was filed, but the court below erroneously rejected the same. He has submitted that for proper adjudication of the case, the court below ought to have allowed the application filed by the petitioner.

4. On hearing the learned counsel for the petitioner and going through the materials on record, I find that Title Suit No. 103 of 1995 was filed by the plaintiff-petitioner before the learned Munsif, Civil Court, Motihari, East Champaran against defendants declaring the possession of respondent no.7 upon the suit land as illegal and without right and title and also for declaring the sale deeds dated 02.09.1987, 15.07.1985 and



29.01.1987 as forged and fabricated. Respondent no. 7 contested the suit and filed written statement. Later on, the petitioner filed a petition under order 1, rule 10(1) of the CPC in the said title suit for incorporating said Shami Ahmed as defendant on 23.07.2016. Defendant respondent no. 7 also filed a petition under order 1 rule 10(2) of the CPC for deletion of name of defendant no. 8 from Title Suit No. 103 of 1995 on 29.01.2016 and both the aforesaid petitions dated 29.01.2016 and 23.07.2016 were heard together and a common order dated 10.12.2018 was passed. It was pleaded by the defendant no. 7 in his reply that since he had already purchased the share of Shami Ahmed vide registered deed dated 10.06.1988 much before filing of the suit, he was not required to be arrayed as a defendant in the suit. In support of his contention, he also filed a copy of the order dated 08.07.2003 passed in Misc. Case No.2 of 2002 wherein it was stated that one Shami Ahmed had already sold his share to defendant no. 7.

5. Having regard to the contentions advanced and the materials available on record, the court below came to the conclusion that Shami Ahmed is neither a necessary party nor a proper party. Having observed so, learned Civil Judge dismissed the application dated 23.07.2016 filed by the plaintiff-petitioner under order 1 rule 10(1) of the CPC.



6. The order impugned is neither perverse nor illegal. In that view of the matter, I am not inclined to interfere with the same in supervisory jurisdiction under Article 227 of the Constitution of India.

7. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.04.2019
Transmission Date	

