

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.227 of 2019

Anapurna Devi, Wife of Late Radha Mohan Pandey, resident of Mohalla-
Ward No. 17, Maharaja Hatta, Katira, Behind B.D.O. Block, Ara, P.S.-
Nawadah (Ara), District- Bhojpur at Ara.

... ... Petitioner

Versus

1. Sri Thakur Jee through its Mahanth Nirmal Kumar Pandey, Son of Sri Chandra Kishore Pandey, present address- Mahajan Toli No. 1, P.S.-Ara Town, District- Bhojpur, Niwasi Village- Sarangpur, P.O. Baraka, Dumara, P.S. -Ara Muffasil, District- Bhojpur.

... Respondent 1st set

2. Akhilesh Pandey, Son of Late Radha Raman Pandey, presently residing at Maharaja Hatta, behind the Block, P.S.-Ara Nawadah, District- Bhojpur, Niwasi Village- Panchrukha Kala, P.S.-Koilwar, District- Bhojpur.
3. Ram Krishna Pandey, Son of Late Radha Raman Pandey, presently residing at Maharaja Hatta, behind the Block, P.S. Ara Nawadah, District- Bhojpur, Niwasi Village- Panchrukha Kala, P.S.- Koilwar, District- Bhojpur.
4. Vikash Kumar, son of Late Kaushal Kishore Pandey presently residing at Maharaja Hatta, behind the Block, P.S. Ara Nawadah, District- Bhojpur, Niwasi Village- Panchrukha Kala, P.S. Koilwar, District- Bhojpur.
5. Akash Kumar, Son of Late Kaushal Kishore Pandey, presently residing at Maharaja Hatta, behind the Block, P.S. Ara Nawadah, District- Bhojpur, Niwasi Village- Panchrukha Kala, P.S. Koilwar, District- Bhojpur.
6. Braj Kishore Pandey, resident of mohalla ward No. 17, Maharaja Hatta, Katira, Behind B.D.O. Block Ara, P.S. Nawadah Ara, District- Bhojpur at Ara.
7. Mithilesh Kumar Pandey, resident of mohalla ward No. 17, Maharaja Hatta, Katira, Behind B.D.O. Block Ara, P.S. Nawadah Ara, District- Bhojpur at Ara.
8. Hariom Pandey, resident of mohalla ward No. 17, Maharaja Hatta, Katira, Behind B.D.O. Block Ara, P.S. Nawadah Ara, District- Bhojpur at Ara.
9. Onkar Pandey, resident of mohalla ward No. 17, Maharaja Hatta, Katira, Behind B.D.O. Block Ara, P.S. Nawadah Ara, District- Bhojpur at Ara.
10. Purushottam Pandey, resident of mohalla ward No. 17, Maharaja Hatta, Katira, Behind B.D.O. Block Ara, P.S. Nawadah Ara, District- Bhojpur at Ara.
11. Badri Nath Pandey, resident of mohalla ward No. 17, Maharaja Hatta, Katira, Behind B.D.O. Block Ara, P.S. Nawadah Ara, District- Bhojpur at Ara.
12. Vijay Pandey, resident of mohalla ward No. 17, Maharaja Hatta, Katira, Behind B.D.O. Block Ara, P.S. Nawadah Ara, District- Bhojpur at Ara.

..... Respondents 3rd set

13. The Municipal Commissioner, Ara Municipal Corporation P.S.-Ara Town,



District- Bhojpur at Ara.

... Respondents 4 set

... ... Respondents

Appearance :

For the Petitioner/s : Mr. Ras Bihari Thakur, Advocate
For the Respondent/s : Mr. Bishwa Bibhuti Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 12-04-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 18.08.2018 as contained in Annexure-P-3 to the instant application passed in Title Suit No.378 of 2003 by the learned Sub Judge, Ara whereby he has allowed the petition dated 19.03.2015 filed on behalf of the respondent no.13 for adding the Municipal Corporation (for short 'Corporation') as defendant to the suit.

2. It is submitted by the learned counsel for the petitioner that respondent no.13 has no concern with the suit in question and the Corporation is not taking any rent from the petitioner in respect of the land in question. The petition filed on behalf of the Corporation before the trial court was under the influence of the plaintiff. The order passed by the trial court is vitiated in law. It has been argued that the court below ought to have dismissed the application preferred by the Municipal Commissioner, Ara.



3. Having heard the learned counsel for the petitioner and perused the order impugned, I find that the court below has allowed the application filed by the Municipal Commissioner, Ara to add the Corporation as defendant after taking into consideration the pleadings made before it. It has held that in view of the contentions of the parties, the application is fit to be allowed in the interest of justice.

4. Order 1 Rule 10(2) of the Code of Civil Procedure confers power upon the court to strike out or add parties. It provides that the Court may at any stage of the proceedings, either upon application or without the application of either party, and on such terms as may appear to the Court to be 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.

5. Since the said provision provides for addition of plaintiff or defendant whose presence before the court may be necessary in order to enable the court to adjudicate upon and settle all the questions involved in the suit, the addition of the



Corporation as defendant in the suit can not be said to be either without jurisdiction or perverse. Sub-rule (2) of Rule 10 of Order 1 gives a wide discretion to the court to meet defect of impleadment of parties.

6. In **Mumbai International Airport (P) Ltd. v. Regency Convention Centre and Hotels (P) Ltd.** [(2010) 7 SCC 417], the Supreme Court considered the scope of Order 1 Rule 10 (2) of the CPC and observed:-

“The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff.”

7. Thus, the court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary or proper party. In exercising its judicial discretion, the court is required to act according to reason and fair play and not according to whims and caprice.

8. There is nothing on the basis of which this Court can come to the conclusion that the order passed by the trial court is unreasonable or unfair.



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

10. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2019
Transmission Date	NA

