

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.231 of 2019**

Sri Ram Ishwar Singh aged about 85 years, Male, S/o Late Ambika Singh R/o Village- Akhtiyarpur Lai, P.S.- Bihta, District- Patna.

... .. Defendant-Petitioner

Versus

1. Smt. Sumanti Devi aged about 58 years, Female W/o Sri Ram Govind Sharma R/o Village- Narwan Jamui, P.S. Dulhin Bazar, District- Patna.
... Plaintiff.. Respondent.
2. Smt. Gyanti Devi aged 48 years, Female W/o Sri Uma Shankar Sharma R/o Vill.- Govindpur, P.O. and P.S.- Bikram, District- Patna.
.... Defendant-Respondent
3. Jitendra Kumar aged 21 years, Male, S/o Sri Ram Govind Sharma R/o Vill.- Narwan Jamui, P.S.- Dulhin Bazar, District- Patna.

... .. Proposed Defendant-Respondent

Appearance :

For the Petitioner : Mr.Rajesh Kumar, Advocate
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 18-04-2019**

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 26.10.2018 passed by Sub-Judge-V, Danapur in Title Suit No. 420 of 2016 whereby the petition dated 12.02.2018 filed by respondent no. 3 under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure (for short 'CPC') has been allowed.

3. Learned counsel appearing for the petitioner submitted that the land as mentioned Schedule- I of the plaint is



the ancestral land of the petitioner and the land as mentioned in Schedule-11 of the plaint is his self acquired property as such the respondent no. 3 (proposed defendant) has no right in the suit. He submitted that merely on the basis of a will executed by the wife of the petitioner during her lifetime, the respondent no. 3 did not acquire any right in the property. The wife of the petitioner was neither a coparcener nor a co-sharer. Thus, the execution of the alleged will deed has no force in law and on the basis of the same the respondent no. 3 could not have been impleaded as one of the defendants. He further contended that no letter of administration or probate has been granted in favour of respondent no. 3 and, thus, also the order impugned is bad in law.

4. The facts of the case are that the plaintiff-respondent no. 1 Smt. Sumanti Devi had filed Title Suit No. 420 of 2016 impleading her father (defendant-petitioner) as defendant no. 1, her mother (wife of the petitioner) as the defendant no. 2 and her sister (respondent no. 2) as defendant no. 3. Since the mother of Sumanti Devi died, her name has been deleted from the cause-title. In the said title suit, the plaintiff has prayed that a preliminary decree of partition of 1/4 share in the suit property be passed in her favour and her share be carved out by way of separate takhta by appointing survey knowing advocate commissioner. She has



also prayed to restrain the defendants by an order of ad interim injunction from changing or transferring or encumbering the suit property. The petitioner appeared in the suit and filed his written statement denying the relief as prayed by the plaintiff-respondent no. 1. On 12.02.2018, a petition under Order 1 Rule 10 read with Section 151 of the CPC, was filed by son of the plaintiff-respondent no. 1 in the suit to add him as defendant. The petitioner filed rejoinder to the petition stating therein that the original defendant no. 2, his wife, had no legal right to execute any deed in favour of any person as she was neither a co-sharer nor a coparcener. The Schedule-I land is the ancestral land while Schedule-II land is self acquired property and as such purported will could not confer any right upon the proposed defendant.

5. After hearing the parties, vide impugned order dated 26.10.2018, learned Sub-Judge-V, Danapur allowed the application preferred by respondent no. 3 under Order 1 Rule 10 read with Section 151 of the CPC.

6. Being aggrieved by the impugned order dated 26.10.2018, the petitioner has filed the instant application.

7. Respondent no. 3 had taken a plea before the court that he had right, title and interest in Schedule-I and Schedule-II property.



8. Order 1 Rule 10(2) of the CPC confers power upon the court to strike out or add parties. It reads as under :-

“10 (2) Court may strike out or add parties.—

The 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 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.”

9. The object of Order 1 Rule 10 CPC is to discourage the contest on technical pleas and to save honest and bona fide claimant from being non-suited.

10. From the reading of the above provisions, it would be manifest that addition of parties is a matter of discretion of the Court. Having regard to the facts and circumstances of the case, if the trial court is satisfied that the respondent ought to have joined as the defendant and his presence was found necessary in order to effectually and completely adjudicate upon and settle all disputed questions involved in the suit, no illegality can be found



with the order impugned. The question as to whether the petitioner has any right, title or interest in the properties in question or as to whether the suit land is ancestral and acquired properties of the petitioner would be adjudicated upon only in course of trial. At this stage, no finding in this regard could have been given by the court below.

11. In that view of the matter, I see no reason to interfere with the order impugned in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The application is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.04.2019
Transmission Date	NA

