

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.206 of 2019**

Tej Narayan Singh Son of Late Jagat Narain Singh Resident of village- Sakaraicha, P.S- Parsa Bazar, District- Patna. At present at- Mohalla- Panchseel Nagar, Bishnu Lane, P.O-Digha, P.S- Danapur, District- Patna

... .. Petitioner

Versus

1. Ashok Patel son of Late Bindeshwar Patel
2. Dharmendra Patel Son of Ashok Patel

Both are resident of Village- Kusumpura Colony, P.O. Danapur, P.S. Rupaspur, District- Patna

3. Kusumpuram Sahakari Grih Nirman Samittee Ltd. Patna through its Adhyaksha/President Sri Hari Narain Singh having its office at Sheikhpura, P.S- Shastri Nagar, District- Patna

... .. Respondents

Appearance :

For the Appellant/s : Mr.Arvind Prasad Singh, Advocate
For the Respondent/s : Mr.

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

Date : 11-04-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 22.09.2018 passed by the learned Munsif, Danapur in Title Suit No. 121 of 2017 whereby he has allowed the application filed by the respondent no.3 under Order 1 Rule 10(2) and Section 151 of the Code of Civil Procedure (for short C.P.C.).



3. It is submitted by the learned counsel for the petitioner that the plaintiff has brought the suit for removal of the encroachment from survey plot no.85. He has got 14 decimal lands out of 42 decimal in survey plot no.85 towards southern side through judgment and decree passed in Title Suit No. 147 of 1977 in Taktabandi over which he has exclusive right, title, interest and possession. The defendant or intervenor-petitioner neither acquired any right, title and interest nor any possession over the same. As such the intervenor-petitioner is neither a necessary nor proper party to the suit. However, the learned Munsif, Danapur erroneously allowed his application for being added as a respondent under Order 1 Rule 10(2) of the C.P.C.. He contended that the plea taken by the intervenor-petitioner that he has purchased the property in question through registered sale deed is not correct. The learned Munsif, Danapur ought to have rejected the prayer of the defendant no.3 and allowed the suit to proceed in terms of the party joined in the plaint.

4. Having heard learned counsel for the petitioner and perused the order impugned, it would be apt to extract the Order 1 Rule 10(2) of the C.P.C. herein below:-

"Rule 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 effectively and completely to adjudicate upon and settle all the questions involved in the suit, be added."

5. The said provision makes it clear that the court may, at any stage of the proceedings either upon or even without any application and on such terms as may appear to it to be just direct that any of the following persons may be added as party:-

(a) Any person who ought to have been joined as plaintiff or defendant but not added, or

(b) Any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit.

6. Apparently, the court is vested with the discretion to add as a party any person, who is found to be a



necessary or proper party.

7. A proper party is a party who, though, not a necessary party, is a person, whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit. A necessary party is a person, who ought to be joined as a party and in whose absence no effective decree can be passed at all by the Court.

8. In Mumbai International Airport Private Limited vs. Regency Convention Center and Hotels Private Limited and Ors. Since reported in (2010) 7 SCC 417, the High Court considering the ambit and scope of the Order 1 Rule 10(2) of the C.P.C. observed thus:-

"The general rule in regard to impleadment of parties is that the plaintiff in a suit, the *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. But that general rule is subject to the provisions of Order 1 Rule 10(2) CPC by which the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party."



9. In the instant case, while allowing the prayer of the intervenor-petitioner for being added as a party respondent, the learned Munsif observed as under:-

"Perused the suit record. On perusal of documents filed by petitioner (intervenor), I find that the property land in question has been purchased by intervenor by sale deed which requires to be scrutinized through trial as documents filed by the petitioner (Intervenor) cast cloud over the claim of plaintiff and Prima facie documents filed by petitioner shows that there is directly or indirectly interest of petitioner over the land in question. Therefore, for the ends of justice, the petitioner filed u/o 1 Rule 10(2) is allowed to be added defendant. Accordingly, intervenor defendant is directed to file his written statement...."

10. The aforesaid observations made by the learned Munsif while allowing the application filed under Order 1 Rule 10(2) of the C.P.C. by the petitioner-intervenor would make it clear that while exercising its judicial discretion, the learned Munsif has acted according to the reason and fair play and not according to the whims and caprice. The order impugned is neither without jurisdiction



nor perverse. In that view of the matter, I see no reason to interfere with the same in exercising supervisory jurisdiction under Article 227 of the Constitution of India.

11. The application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
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