

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.205 of 2019

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Buchan Sharma @ Buchan Devi @ Buchan @ Indra Sharma Daughter of
Late Bachchu Sharma, Wife of Raju Sharma @ Raj Kishore Prasad
Vishwakarma, resident of Village- 34 Biskarma Bhawan, Kali Asthan, Ganga
Babu Ki Theki P.S. Patna City, District- Patna, Bihar

... .. Petitioner

Versus

1. Rajendra Sharma Son of Late Bachchu Sharma, resident of Village-
Piparpati, P.S.- Krishna Garh, District- Bhojpur- Plaintiff-Respondent-1st Set
2. Bali Ram Sharma Son of Late Bachchu Sharma
3. Santosh Sharma Son of Bali Ram Sharma
4. Durgesh Sharma Son of Bali Ram Sharma

Sl. No. 2 to 4 are residents of Village- Piparpati, Police
Station- Krishna Garh, District- Bhojpur

Defendants-Respondents-2nd Set

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Appearance :

For the Appellant/s : Mr. Manoj Kumar, Advocate
For the Respondent/s : Mr.

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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 challenging
the order dated 11.09.2017 passed in Title Suit No. 273 of 2012
whereby the application filed by her under Order 1 Rule 10(2)
of the Civil Procedure Code (for short 'C.P.C.') for adding her



as a defendant in the suit has been rejected.

3. Learned counsel for the petitioner submitted that the petitioner is daughter of late Bachchu Sharma. She is sister of the plaintiff-respondent 1st set. The defendant no.1 has admitted in his written statement that he has a sister, namely, Buchan Sharma @ Buchan Devi. However, the trial court rejected the application filed for adding her as a party under Order 1 Rule 10(2) of the C.P.C. on an erroneous ground that documentary evidence has been filed on behalf of the petitioner to show that Buchchu Sharma had a daughter, namely, Buchan Sharma @ Buchan Devi. He contended that the presence of the petitioner as defendant in the suit is necessary in order to enable the trial court to adjudicate upon and settle the questions involved in the suit.

4. From perusal of the order impugned, it would be manifest that the plaintiff-respondent 1st set has filed Title Suit No. 273 of 2012 against his brother and nephew for carving out the share of the suit land. The application filed by the petitioner was contested by the plaintiff-respondent-1st Set before the trial court. A rejoinder was also filed by him wherein it was stated that the application for adding as a respondent in the suit has been filed by the petitioner only to harass the



plaintiff at the behest of defendant no.1 of the suit. It was pleaded on behalf of the plaintiff that the application filed by the petitioner does not state the correct facts and she is not the sister of the plaintiff. It was also pleaded that Buchan Sharma @ Buchan Devi is not connected in any manner with the plaintiff's family and thus, she was neither a necessary party nor a proper party.

5. Having regard to the pleading of the parties, the trial court came to the conclusion that merely because the claim of the petitioner is supported by the defendant no.1 of the suit, the petitioner cannot become a necessary party in the suit. The trial court held that though the petitioner has asserted that she is sister of the plaintiff and defendant no.1 and the defendant no.1 has supported the prayer of the petitioner, no documentary evidence has been filed by the petitioner to show that the Buchchu Sharma had a daughter, namely, Buchan Sharma @ Buchan Devi.

6. In absence of any documentary evidence, if the court has come to the conclusion that the petitioner is neither a necessary party nor a proper party, in the opinion of this Court, no error can be found with the impugned order.

7. Order 1, Rule10(2) of the C.P.C. provides



that 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.

8. Apparently, under Order 1 Rule 10(2) of the C.P.C., the court has been vested with discretionary power to strike out name of any party improperly joined or add name of any person who ought to have been joined. The only requirement in law is that such discretionary power should be exercised reasonably and judiciously.

9. Since, the petitioner failed to produce any material before the court to show that she is daughter of Late Buchchu Sharma and sister of the plaintiff, no error can be found with the order impugned passed by the court below whereby the application of the petitioner has been rejected. The order passed by the trial court is neither without jurisdiction nor perverse.



10. In that view of the matter, in exercise of supervisory jurisdiction, I am not inclined to interfere with the order impugned.

11. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

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

