

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.211 of 2019**

Om Prakash @ Om Prakash Arya son of Late Tapasi Ram @ Tapashwi Ram Arya, resident of Purani Bazar Narkatiaganj, P.O.- Narkatiaganj, P.S.- Shikarpur, District- West Champaran.

... .. Petitioner

Versus

1. Ashok Kumar Rajgarhia son of Sri Sitaram Rajgarhia, resident of Mohalla- Lal Bazar, P.O. and P.S.- Bettiah, District- West Champaran.
2. Gobind Prasad Rajgarhia son of Late Sitaram Rajgarhia, resident of Mohalla- Lal Bazar Bettiah, P.O. and P.S.- Bettiah, District- West Champaran.

... .. Respondents

**Appearance :**

For the Appellant/s : Mr.Sunil Srivastava, Advocate  
For the Respondent/s : Mr.

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

**Date : 05-04-2019**

Heard.

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 in Title Suit No. 176 of 2004 by the learned Sub-Judge, Narkatiaganj, West Champaran by which he has allowed the petition filed by respondent no. 2 on 10.05.2018 under Order 1, Rule 10(1) of the Code of Civil Procedure (for short 'CPC') for adding respondent no. 2, Govind Prasad Rajgarhia as plaintiff no. 2 in the plaint of the title suit.

3. It has been submitted by the learned counsel for the petitioner that the application filed by the respondent



no.2 was quite vague and neither properly verified nor affidavited and has been filed at the instance of respondent no. 1 just to delay the disposal of the suit. On perusal of the statement made in paragraph-2 of the plaint, it would appear that respondent no.1 had filed the suit in the capacity of Karta and manager of his family. As such, there was no option for adding any other member of the family as plaintiff at the fag end of the suit. He has further contended that respondent no. 2 is neither a necessary party nor a proper party to the suit for adjudication of the issues involved in the suit as the respondent no.1 has filed the suit representing himself to be a co-sharer and there is no allegation that the respondent no.1 has gone in collusion with the petitioner.

4. I have heard learned counsel for the petitioner and carefully perused the materials available on record.

5. The brief facts of the case are that the respondent no. 1 had filed title suit which was registered as Title Suit No.176 of 2004 in the court of learned Sub-Judge, Narkatiaganj, West Champaran for declaration of his right, title and possession over the suit land stating therein that father of respondent no.1 purchased the suit land measuring 4 Bigha 18



Katha 16 Dhur from Smt. Shakuntala Devi, wife of Gulabchand Rajgarhia vide registered sale deed no. 19392 dated 14.07.1974 in the name of petitioner's father as trustee and 5 Bigha 16 Katha from wife of Gulabchand Rajgarhia vide registered sale deed no.19283 dated 14.07.1974 in the name of petitioner's father as trustee and the entire land came in possession of father of respondent no.1.

6. On the basis of the aforesaid contentions, in the title suit, he has prayed for the following relief:-

(a) A decree be passed in favour of the plaintiff against the defendant with declaration that the sale deed no. 19283 in the name of deceased father of the defendant for 5B, 18K-16 Dhur in the name of the defendant as trustees total 10 Bigha 14 Katha 16 Dhurs being the suit lands were purchased by father of the plaintiff with right, title and possession of the plaintiff, the defendant and his father being trustees name lender.

(b) The Anchal Adhikari, Lauriya be ordered to transfer the jamabandi of the suit land in the name of the plaintiff from the name of the defendant and his father Tulsi Ram @ Tapeswar Ram.

(c) Cost of the suit be awarded to the plaintiff against the defendant.



(d) Any other relief or reliefs, the plaintiff found entitled be also awarded to the plaintiff.

7. On 10.05.2018, respondent no. 2 filed an application under Order 1, Rule 10(1) of the CPC for adding as plaintiff no. 2 in the plaint of the title suit stating therein that at the time of filing the suit due to inadvertence the name of respondent no. 2 was left to be mentioned in the suit which came to the knowledge at the fag end. On 23.05.2018, the respondent no.2 filed an affidavit in support of his petition dated 10.05.2018 by mentioning the name of his father as Late Suraj Mal Rajgarhia. The petitioner contested the application filed by the respondent no.2. He has filed a rejoinder petition on 10.05.2018.

8. In his application the respondent no. 1 had filed the suit in the capacity of Karta and manager of the family. The trial court after hearing the parties vide order dated 10.12.2018 allowed the petition filed by the respondent no. 2 under Order 1, Rule 10(1) of the CPC and directed to add the name of the respondent no. 2 as plaintiff in the present suit and also allowed to give his evidence in the suit awarding cost of Rs. 5,000/-.



9. From perusal of the order impugned it would be apparent that the respondent no.2 is the brother of respondent no.1. This fact has been pleaded by the respondent no.2 which has not been controverted either by the respondent no.1 or the petitioner. The suit is declaratory in nature. Under Order 1, Rule 10(1) of the CPC, if there is a bona fide mistake in describing the plaintiff, the court is empowered to set it right and promote the cause of justice. Addition of parties is a matter of discretion of the court. The very object of this rule is to discourage contests on technical grounds and to save the bona fide claimants from being non-suited.

10. The original plaintiff has prayed in the suit for a decree in his favour against the defendant with declaration that sale deed no.19283 in the name of deceased father of the defendant for 5 Bigha and 16 Katha and another sale deed no.19392 for 4 Bigha, 18 Katha and 16 Dhurs in the name of defendant as trustee were purchased by the father of the plaintiff.

11. In view of the nature of the relief prayed for as also the admitted case of the parties that the respondent no. 2 is the full brother of the respondent no. 1, in the opinion of this Court, if the court below has allowed the prayer made by the



respondents to implead the respondent no.2, as one of the plaintiffs, no illegality can be found with the order impugned, as it is neither without jurisdiction nor perverse.

12. The application, being devoid of any merit, is dismissed.

**(Ashwani Kumar Singh, J)**

Md. S/sneha

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