

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.418 of 2019

1. Samsad Mukhiya @ Shamshad Ali Son of Late Mohammad Naim Resident of Village- Raibari Mahuarwa, Jharmahui, Ward No.- 6, P.S.- Chautarwa, District- West Champaran.
2. Rajendra Prasad @ Yogendra Sah Son of Late Bangali Sah Resident of Village- Mill Bahuari, Ward No.22, P.S.- Ramnagar, District- West Champaran.
3. Momtaz Badai @ Momtaz Mistri Son of Late Chhedi Mistri Resident of Village- Near Idgah Masjid, Mill Bahuari, Ward No.-23, P.S.- Ramnagar, District- West Champaran.
4. Imran Ansari @ Ibran Mian Son of Gafar Ansari Resident of Village- Mill Bahuari, Ward No.-23, P.S.- Ramnagar, District- West Champaran.

... ..Defendant 3rd Set- Petitioners

Versus

1. Akhtar Mian Son of Late Fateh Mian Resident of Village- Narainapur, P.O. and P.S.- Ramnagar, District- West Champaran.
2. Hasan Tara Wife of Late Rajak Mian Resident of Village- Dumaria Estate, P.S.- Narkatiyaganj, District- West Champaran.
3. Salma Khatoon Wife of Jang Bahadur Mian Resident of Village- Bhapta, P.S.- Sathi, District- West Champaran.
4. Khudaija Khatoon Wife of Sultan Mian Resident of Village- Manuwapul Siyarosati, P.S.- Bettiah Muffasil, District- West Champaran.

Defendant 1st Set-Respondents

5. Raiful Khan Son of Jhabar Khan Resident of Village- Dhanarpha at present Thana Road, Ram Nagar, P.O. and P.S.- Ramnagar, District- West Champaran.
6. Chhote Khan Son of Noorul Hoda Resident of Village- Dhanarpa, P.O. and P.S.- Ramnagar, District- West Champaran.

... .. Defendant 2nd Set - Respondent/s

Appearance :

For the Petitioner/s : Mr.Vijay Kr Singh No.1, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 11-07-2019

Heard learned counsel for the petitioners.



2. This application has been filed by the petitioners challenging the order dated 25.01.2019 passed by the learned Munsif, Bagaha, West Champaran in Title Suit No.82 of 2016 whereby he has rejected the petition dated 29.10.2018 filed by the petitioner under Section 151 of the Code of Civil Procedure, 1988 (for short 'CPC') for framing of two additional issues.

3. Learned counsel for the petitioners contended that the trial court has failed to appreciate that without deciding the two issues raised by the defendants-petitioners before the court below, the suit for permanent injunction cannot be adjudicated. He submitted that the suit is at the initial stage and no harm would be caused to either of the parties if the proposed issues are allowed to be added along with the issues already framed in the suit.

4. The facts of the case, in brief, are that Title Suit No. 82 of 2016 was filed by the plaintiff respondent against the defendants. The said suit has been filed for permanent injunction in respect of the property mentioned in schedule-1 of the plaint. The plaintiff respondent has claimed that he came in possession of the land as legal heir of Jiut Mian and his son Fateh Mian, but the defendants having no concern with the land in question started claiming the same and creating hindrance in his peaceful possession. The defendants appeared in the suit and filed



their written statement. After framing of the issues, the defendants petitioners filed an application on 29.10.2018 under Section 151 of the CPC and prayed for framing of the following two additional issues:-

- (i) Whether Wali Mian has a daughter Mahaludana wife of Madar Mian?
- (ii) Whether the sale deed dated 28.09.1974 is binding upon the heirs of Thag Mian or not?

5. It was pleaded on behalf of the defendants petitioners that in order to arrive at a rightful conclusion in the suit, the above two issues are essentially required to be added to the issues already framed.

6. Having heard the parties, the learned Munsif rejected the application vide impugned order dated 25.01.2019.

7. It would be evident from the perusal of the order impugned that the learned Munsif rejected the application on the ground that the suit is for permanent injunction and not for determination of title. He also took into consideration the fact that no counter claim has been filed by the defendants.

8. Order 14 of the CPC deals with settlement of issues and determination of suit on issues of law or on issues agreed upon. Rule 1 thereof deals with framing of issues, which reads as under:-



"1. **Framing of issues.**-(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the court to frame and record issues where the defendant at the first hearing of the suit makes no defence."



9. Order 14, Rule 3 provides that the court may frame the issues from all or any of the following materials:-

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

10. Order 14, Rule 5(1) provides that the court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversies between the parties shall be so made or framed.

11. Sub-rule (2) of aforesaid Rule 5 provides that the Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

12. Thus, it would be manifest from the aforesaid provisions that issues are framed on the basis of pleading made on oath by the parties. They are framed in order to identify the issues of fact and issues of law, which are necessary for determining the matters in controversy between the parties. Under Order 14, Rule 5



of the CPC, amendment of issues or framing of additional issues are permissible at any stage before passing a decree.

13. However, in the present case, the petitioners have failed to aver as to why the additional issues are necessary to be framed. They have not shown as to how they essential for determining the matter of controversy between the parties. They have failed to point out as to why the issues framed earlier are not sufficient to resolve the dispute between the parties.

14. Having regard to the facts and circumstances of this case, I am of the opinion that the learned Munsif rightly rejected the application of the petitioner, as the same was nothing but an abuse of the process of law.

15. 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.

16. The application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.07.2019
Transmission Date	

