

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.548 of 2019

Ramayan Singh, aged about 65 years, Male, S/o Jogi Singh, resident of Village- Deodhi Paschim Tola, P.O.- Deodhi, Via- Madhaura, District- Chapara.

... .. Defendant/ Intervener Petitioner
Versus

1. Sheo Nath Singh, S/o Tuangar Singh, Resident of Village- Deodhi, P.O.- Deodhi, P.S.- Taraiya, District- Saran at Chapra.
.....Plaintiff/ Respondent
2. Kameshwar Prasad Singh, Son of Late Prabhu Nath Singh Resident of Village- Deodhi, P.O.- Deodhi, P.S.- Taraiya, District- Saran at Chapra.
3. Suresh Singh, Son of Late Prabhu Nath Singh Resident of Village- Deodhi, P.O.- Deodhi, P.S.- Taraiya, District- Saran at Chapra.
4. Rajeshwar Prasad Singh, Son of Late Prabhu Nath Singh Resident of Village- Deodhi, P.O.- Deodhi, P.S.- Taraiya, District- Saran at Chapra.
5. Chandra Shekhar Prasad Singh, Son of Late Prabhu Nath Singh Resident of Village- Deodhi, P.O.- Deodhi, P.S.- Taraiya, District- Saran at Chapra.
6. Arun Singh, Son of Late Prabhu Nath Singh Resident of Village- Deodhi, P.O.- Deodhi, P.S.- Taraiya, District- Saran at Chapra.

... .. Defendants-Petitioners

Appearance :

For the Appellant/s : Mr. Pradhan Murli Manohar Prasad-Advocate
Mr. Raju Kumar Goswami-Advocate.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

13-09-2019

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 19.11.2018 passed by the learned Subordinate Judge-VII, Saran at Chapra, whereby the application dated 20.02.2018 filed by the petitioner under Order-1, Rule-10(2) of the Code of Civil Procedure has been rejected.



3. It is submitted by the learned counsel for the petitioner that the order impugned passed by the trial Court is erroneous. It has failed to appreciate that the petitioner is a necessary party and has been deliberately not impleaded as party by the plaintiff. He contended that while exercising the powers conferred under Order-1, Rule-10(2) of the Code of Civil Procedure, the trial Court was required to appreciate as to whether the presence of the petitioner before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settled all the questions involved in the suit.

4. Having heard learned counsel for the petitioner and perused the materials on record, I find that plaintiff-respondent has filed Title Suit No.368 of 2015 in the Court of Subordinate Judge-VII, Saran at Chapra against the defendant seeking relief of permanent injunction in respect of Schedule-I and II of the suit land. The petitioner and one Shyam Narain Singh filed an application on 20.02.2018 under Order-1, Rule-10(2) of the Code of Civil Procedure and pleaded that they be added as defendants in the suit. They contended that the plaintiff had no concern with the property described in Schedule-II of the plaint and he has fraudulently gained over the suit property



described in Schedule-II.

5. A rejoinder was filed on behalf of the petitioner of the suit contesting the application preferred under Order-1, Rule-10(2) of the Code of Civil Procedure. The plaintiff claimed that the applicants of the petition filed under Order-1, Rule-10(2) of the Code of Civil Procedure had no concern with the suit property and they are not in possession over the same. The plaintiff further claimed that the applicants are not the legal heirs of the khatiyani raiyat of the suit property.

6. After hearing the parties, the trial Court rejected the application filed by the petitioner and one another under Order-1, Rule-10(2) of the Code of Civil Procedure, on the ground that in support of the claim that they are legal heirs of the khatiyani raiyat, no document was produced. They also failed to show any document that they are related with the khatiyani raiyat. The trial Court further found that the petitioner was not in possession of the suit property. Since the petitioner failed to show any document relating to right, title or possession over the property in question, the trial Court rejected the application vide impugned order dated 19.11.2018.

7. The powers vested in the Court under Order-1, Rule-10(2) of the Code of Civil Procedure to strike out or add



parties is discretionary in nature. The trial Court has given cogent reasons for rejecting the application filed on behalf of the petitioner. Once, in exercise of discretionary power, if the trial Court did not find it necessary to implead the petitioner as a defendant in order to enable it effectually and completely to adjudicate upon and settle the questions involved in the suit and rejected the application filed under Order 1, Rule 10(2) of the Code of Civil Procedure, no error can be found with the same.

8. The order impugned is neither perverse nor without jurisdiction.

9. In that view of the matter, I am not inclined to interfere with the order under challenge in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

10. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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