

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1308 of 2017

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Syed Suleman son of Late Syed Sultan, resident of Sosarai, P.O. Biharsharif,
Police Station - Sosarai, District - Nalanda.

... .. Petitioner

Versus

1. Rakesh Kumar
2. Santosh Kumar
3. Bittu Kumar
All sons of Late Bishwanath Paswan
4. Krishna Paswan son of Late Shobhi Paswan
5. Smt. Baby Devi wife of Late Munna Paswan
6. Kundan Kumar son of Late Munna Paswan
7. Pintu Kumar son of Late Munna Paswan
8. Raja Paswan
9. Suresh Paswan
10. Ranjeet Paswan @ Subhash Paswan
11. Ramesh Paswan @ Rameshwar Paswan
All sons of Late Raghunath Paswan, residents of Dalhatta Charkhipar, P.S. -
Malsalami, District – Patna.

..... Plaintiff-Respondents

12. Munna Sajid
13. Aflas Alam
14. Jhunna Sajid
All residents of Mohalla - Pirbaish, Alamganj, P.S. Alamganj, District - Patna.
15. Kedarnath Jaiswal son of Late Ram Narayan Lal Chaudhary
16. Anup Kumar Jaiswal
17. Anuj Kumar Jaiswal
Both sons of Late Pramod Pd. Jaiswal
All residents of Mohalla - Nandgola Patna City, P.S. - Malsalami, P.O. - Patna
City, District - Patna.
18. Syed Shah Asgar Hussain, son of Late Nawab Syed Shah Wazid Hussain
resident of Bank Road B - P Koirala Marg, P.S. - Gandhi Maidan, District -
Patna - 800001.
19. The Principal Commissioner, Patna Municipal Corporation, Maurya Lok
Complex, Patna - 800001.
20. The Executive Officer, P.M.C., Patna City Circle Mena Bazar, District - Patna
- 800007.

... .. -Defendants-Respondents

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Appearance :

For the Petitioner/s : Mr. Bishwa Nath Upadhyay, Advocate
For the Respondents No.1 and 2: Mr. Shailendra Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 21-02-2019



Heard learned counsel for the petitioner and learned counsel for the respondents.

2. This application has been filed by the petitioner under Article 227 of the Constitution of India for setting aside the order dated 27.04.2017 passed by the learned Sub-Judge-III, Patna City vide Title Suit No. 128 of 2017 by which the application filed by the petitioner under Order 1 Rule 10(2) along with Section 151 of the Code of Civil Procedure (for short 'CPC') has been rejected.

3. Learned counsel appearing for the petitioner submitted that the court below has not been applied its judicial mind towards the case and arbitrarily rejected the intervenor petition by the impugned order. While passing the impugned order the court below has observed that petitioner has not filed any relevant documents to show that his mother was the daughter of Syed Shah Wazid Hussain. The document in support of the claim could have been filed if the petitioner would have been allowed to be a party in the case. At the initial stage, for the purpose of being added as a party, it was not required for the petitioner to adduce evidence to show that he has interest in the property in question. The petitioner is still in possession of certain properties and any decision, which could be passed in the suit, in question, would seriously cause prejudice to his rights. Since the petitioner is the



exclusive owner and occupier of Plot No. 984, with a view to obtain a collusive decree, the plaintiffs have not impleaded him as a party in the suit.

4. *Per contra*, learned counsel appearing for respondent nos. 1 and 2, who are plaintiffs in the court below, submitted that there is no jurisdictional error in the order passed by the court below. Though petitioner had filed the intervention petition on the ground that Syed Shah Wazid Hussain was his maternal grandfather, who made oral 'Hibba' of the suit property in favour of his mother whereafter she came in possession over the suit property and her name was also mutated in the shrista of Government of Bihar, as she had been paying rent to the Government and after her death the petitioner came in possession over the suit property and is paying rent to the Government of Bihar, in support of such claim, he has neither filed any document to show that his mother was daughter of Syed Sah Wazid Hussain nor any document was filed to show possession of the petitioner over the suit property. In that view of the matter, the court below rightly rejected the petition for intervention filed by the petitioner.

5. I have considered the submissions made by the petitioner and the respondent nos. 1 and 2 and perused the record.



6. In the application filed under Order 1 Rule 10(2) of the CPC in the court below the petitioner contended that Syed Shah Wazid Hussain had two sons, namely, Ashgar Ali Hussan and Syed Jaffar Hussain and daughter, namely, Syed Razia Praveen. Syed Razia Praveen, wife of Syed Sultan looked after her father in his old age, who gave oral 'Hibba' of the entire share of plot No.984 in favour of his daughter and delivered possession of the same to her. After 'Hibba', a rent receipt was issued by Syed Shah Wazid Hussain in favour of Syed Razia Praveen. Since Razia Praveen came in physical possession, after her death, plot no.984 (suit property) is in possession of the petitioner. He applied for mutation in his name and is in possession of rent receipts.

7. In rejoinder filed by the plaintiffs-respondents it was pleaded that neither Syed Razia Praveen was the daughter of Syed Shah Wazid Hussain nor she had ever looked after him. Syed Shah Wazid Hussain had never gifted his properties to the stranger Razia Praveen. Her name had not been recorded either in the circle office or in any office of the State concerning the suit property nor she ever came in possession over the suit property. The petitioner has also not got right, title and possession over the suit property. It was further pleaded that the petitioner is neither necessary nor



proper party for the adjudication of the controversy involved in the suit.

8. Since the application under consideration was filed under Order 1 Rule 10(2) of the CPC, I think it apt to reproduce the said provisions hereunder:-

“O. 1 R. 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 effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

9. From a reading of the aforesaid provision, it would be manifest that it gives a very wide discretion to the court. The very object of the said provision is to bring on record all persons, who are parties to the dispute, relating to the subject matter so that the dispute may be determined in their presence. The power to strike out as well as to add parties can be exercised at any stage of the proceedings and even without any application of by a party.



10. As seen above, it is open to the court to add any such person as a necessary party in the suit to enable the court to effectively adjudicate the question involved in the suit. However, for exercise of power under this rule, the court has to come to a finding that the party is a necessary or proper party. Therefore, the addition of parties would depend upon the judicial discretion which has to be exercised in the facts and circumstances of the case.

11. A person, who is neither a necessary nor a proper party, can not be allowed to be a party.

12. Here, in the present case, the court below passed the impugned order rejecting the application filed by the petitioner under Order 1 Rule 10(2) observing as under:-

“Heard the parties and peruse the case record and find out that the present petition was filed by the petitioner with prayer to included him as intervenor defendant in the present suit on the ground that Syed Shah Wazid Hussain was his maternal grandfather who made oral hibba of suit property in favour of his mother and she came in possession over the said property and her name was also mutated in the shrasta of government of Bihar and she has been paying rent to the government and after her death the petitioner came in possession over the suit



property and has been paying rent to the government. In support of his claim he has filed photocopy of the said oral Hibba and some rent receipts and also an affidavit with respect to declaration that he is the grandson of Syed Shah Wazid Hussain, but the petitioner has not filed any relevant document to show that his mother was the daughter of Syed Shah Wazid Hussain and also no document to show present possession of the petitioner over the suit property has been filed. The petitioner has asserted that he has been paying rent to the government of Bihar, but no recent rent receipt in this respect has been filed by the petitioner in support of his assertion. Considering the discussion made above, it is evident that in support of the claim of the petitioner no relevant document has been filed by the petitioner to show that he has actually having any interest in the suit property and hence he can not be made party in the present suit on the ground of his being a necessary or proper party in the present suit. As such, the petition of Syed Suleman is hereby rejected.”

13. As the petitioner failed to bring to the notice of the court any document to show that his mother was the daughter of Syed Shah Wazid Hussain and he is in possession over the suit property in support of his assertion and though he claimed that he



is paying rent to the Government of Bihar, no rent receipt was filed by him in support of such claim, if the court below came to the finding that the petitioner failed to show that he had actually any interest in the suit property, no error can be found with the order impugned his application has been rejected by court below.

14. In view of the discussions made above, I am not inclined to interfere with the order impugned in my supervisory jurisdiction. It is dismissed accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.03.2019
Transmission Date	NA

