

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1905 of 2017

Mahesh Tiwary s/o Jagarnath Tiwary resident of village - Narayanpur Anant
@ Sherpur, P.O. - M.I.C. Bela, P.S. - Sadar, District - Muzaffarpur.

... .. Defendant-Petitioner

Versus

1. Naresh Tiwary s/o Jagarnath Tiwary resident of village - Narayanpur Anant
@ Sherpur, P.O. - M.I.C. Bela, P.S. - Sadar, District – Muzaffarpur.

... .. Plaintiff-Respondent 2nd set

2. Shri Suresh Tiwary s/o Late Jagarnath Tiwary
3. Smt. Krishna Devi w/o Sri Suresh Tiwary Both residents of Mohalla - Panka
Toli, P.S. - Kazi Mohammadpur, P.O. - Head Post Office Muzaffarpur,
District - Muzaffarpur.
4. Smt. Uma Dev w/o Shri Kant Prasad Singh resident of Village - Marachi,
P.O. Marachi, P.S. - Hathidah, District - Patna.
5. Smt. Sudha Kumari w/o Shri Awadhesh Prasad Singh Resident of Mohalla -
Surosingh Nahar, Behind Dankani Power House, P.O. Panditars, P.S. -
Taushit, District - Hugali, West Bengal.
6. Smt. Asha Devi w/o Sri Harbansh Narayan Singh resident of village and
Post - Manthi, P.S. Gaighat, District – Muzaffarpur.

... .. Defendant-Respondent 2nd set

7. Pawan Kumar Choudhary s/o Mahendra Choudhary
8. Nandjee s/o Ramrekha Tiwary
9. Mohan Tiwary s/o Late Baidnath Tiwary All residents of village -
Narayanpur Anant @ Sherpur, P.O. M.I.C. Bela, P.S. Sadar, Subdivision
Muzaffarpur East, District - Muzaffarpur.

... .. Intervenors-Respondents

Appearance :

For the Appellant/s : Mr.Ranjan Kumar Dubey
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 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 defendant-petitioner challenging the
order dated 11.08.2017 passed by the learned Sub-Judge-XV,



Muzaffarpur in Partition Suit No. 500 of 2008 by which he has allowed the application filed by the intervenors-respondents under Order 1, Rule 10(2) of the Code of Civil Procedure (for short 'CPC').

3. Learned counsel appearing for the petitioner submitted that the trial court failed to appreciate that the intervenors had filed the petition with malafide intention so that the parties to the suit may suffer and justice is delayed. He contended that the court below without giving due consideration to the arguments advanced on behalf of the respective parties, passed the order allowing impleadment of intervenors as defendants mechanically and without application of judicial mind.

4. The facts of the case, in brief, are that the plaintiff has filed Partition Suit No. 500 of 2008 for partition of the suit land as mentioned in Schedule II/A of the plaint to the extent of 1/5th share. Alternatively, he has prayed that if the court comes to a conclusion that the Schedule II/A and item no.1 of Schedule IV, V and VI of the ancestral property are joint, then a preliminary decree for 3/10th share of plaintiff be passed and also if the item no.2 of Schedule IV, V and VI, i.e., Schedule III, the acquired land of three brothers, are found joint, a preliminary decree for 1/3rd share of plaintiff be passed and after appointing survey knowing



pleader commissioner, his share may be carved out and he may be put in possession. The defendants appeared in the suit and filed their respective written statements.

5. During pendency of the suit, one intervention application was filed on behalf of the intervenor-respondents under Order1, Rule 10(2) of the CPC with a prayer to add them as party to the suit on the ground that the property under dispute is ancestral land in which they have share since their ancestors are common.

6. The defendant-petitioner and the plaintiff filed rejoinder to the said petition and raised question of maintainability of the said petition on the ground that the properties as mentioned in the schedule of the petition are not the subject matter of the suit. The defendant also pleaded that the intervenors have got no concern with the 17 decimal land of Revisional Survey Plot No. 1576 as mentioned in Schedule III/B of the plaint, which has been acquired from joint family fund of the family of Jagarnath Tiwary in the name of Naresh Tiwary.

7. Having considered the submissions made on behalf of the parties and perused the documents filed on their behalf and the genealogy given in the petition, the trial court came to the conclusion that the intervenors are co-sharers of the suit land and



have got interest in the land. Since the case is of partition, hence, for determination of real controversy, the trial court formed an opinion that the intervenors are required to be made party to the suit. Hence, the application filed on behalf of the intervenors was allowed.

8. It is not disputed that under Order 1, Rule 10 of the CPC, the court is vested with the discretionary jurisdiction. In case, on appreciating the pleadings of the parties and after hearing them, if the trial court was of the opinion that the intervenors are necessary and proper parties and it allowed the application filed by the intervenors under Order 1, Rule 10(2) of the CPC, the same cannot be held to be either perverse or without jurisdiction. In that view of the matter, I am not inclined to interfere with the same in exercise of discretionary jurisdiction under Article 227 of the Constitution of India.

9. The application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18-09-2019
Transmission Date	

