

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1372 of 2018

1. Jailal Manjhi Son of Late Chulhai Manjhi,
2. Dudh Nath Manjhi, Son of Jailal Manjhi,
3. Dharm Nath Manjhi, Son of Jailal Manjhi,
4. Dharichhan Manjhi, @ Dharichhan Paswan, Son of Jailal Manjhi.
5. Rupan Manjhi @ Rupan Paswan, Son of Jailal Manjhi All residents of Village- Majhauwan, Tole Barbanna, P.O.- Dighwara, P.S. Dighwara, District- Saran.

... .. Intervenor Applicants/Petitioners
Versus

1. Bindeshwar Singh @ Bindeshwari Singh Son of Late Gurudayal Singh,
2. Birendra Singh, Son of Late Rama Singh
3. Surendra Singh, Son of Late Kalika Singh, No. 1 to 3 residents of Village- Majhauwan, Tole Barbanna, P.O. - Dighwara, P.S.- Dighwara, District- Saran.

... .. Defendants/Respondents 1st set

4. Bali Manjhi, Son of Late Kuwar Manjhi.
5. Amarjeet Manjhi, Son of Late Kuwar Manjhi.
6. Bachhan Manjhi, Son of Late Kuwar Manjhi.
7. Krishna Manjhi, Son of Late Kuwar Manjhi.
8. Daulatia Devi @ Rukmini Devi, Wife of Late Ram Sudesh Manjhi.
9. Kanhai Manjhi, Son of Late Ram Sudesh Manjhi.
10. Bharat Manjhi, Son of Late Ram Sudesh Manjhi.
11. Binay Manjhi, Son of Late Ram Sudesh Manjhi.
12. Binod Manjhi, Son of Late Ram Sudesh Manjhi.
13. Jasur Manjhi, Son of Late Ram Sudesh Manjhi.
14. Divi Lal Manjhi, Son of Late Subhash Manjhi, No. 4 to 14 residents of Village- Dighwara, Tole Barbanna, P.O.- Dighwara, P.S.- Dighwara, District- Saran.

... .. Defendants/Respondents 2nd set

Appearance :

For the Appellant/s	:	Mr. Mahesh Narayan Parbat, Sr. Adv. Mr. Sanjay Kumar Jha, Adv. Mr. Bhanu Prakash, Adv.
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 17-05-2019



Heard Mr. Mahesh Narayan Parbat, learned senior advocate for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 02.07.2018, as contained in Annexure-3 to this application, passed by the learned Munsif, Saran in Title Suit No. 107 of 2003 by which he has rejected the application filed by the petitioners under Order 1 Rule 10(2) of the Code of Civil Procedure (for short 'CPC') for impleading them as party defendants in the said suit.

3. Mr. Mahesh Narayan Parbat, learned senior advocate appearing for the petitioners submitted that while passing the impugned order dated 02.07.2018, the learned Munsif has failed to appreciate the facts and the law involved in the case properly and has come to an erroneous conclusion. He should have held that the intervenors applicants were claiming their title and possession in the land in question and had produced supporting documents also claiming that they were necessary and proper parties. He submitted that the intervenors applicants were necessary parties for the just decision of the case. Their application should have been allowed by the learned Munsif taking note of the prejudice going to be caused to them. The learned Munsif has erred in holding that as the intervenors applicants are co-villagers of the respondents, it is not



possible that they would not have knowledge of the case. He has further pleaded that an application under Order 1 Rule 10(2) of the CPC can be invoked at any stage of the proceeding and merely because the same was filed at the stage of final arguments, it could not have been a ground for rejecting the application filed by the petitioners.

4. The facts of the case, as narrated by the petitioners, in brief, are that the plaintiffs-respondents 1st set had filed the title suit in which the respondents 2nd set were made defendants with a prayer for declaration of sale deed dated 25.07.1986 regarding Schedule 1 property executed by one Anwar Khan in favour of Bindeshwar Singh as legal and valid document on the basis of which he had title and possession over the same and further to confirm his possession over the Schedule 1 property of the plaintiff. Another prayer in the said title suit is for a declaration that the defendants of the suit have no title or possession over the Schedule 1 property and to restrain them by passing an order of injunction from making any interference or alienating or changing the nature of the land in question in any manner and for cost and other reliefs.

5. In the suit, witnesses were examined on behalf of the plaintiffs and the defendants and after the evidence of the plaintiffs



and the defendants were closed and the case was fixed for arguments.

6. At this stage, the petitioners filed an application under Order 1 Rule 10(2) of the CPC for impleading them as defendants. They contended that in course of hearing of Title Suit No. 23 of 2005, they became aware about the pendency of the Title Suit No. 107 of 2003 and, having come to know about it, since they were not made parties in the case, with malafide intention, in collusive manner, they need to be impleaded as party defendants.

7. The said application was contested by the respondent 1st set in the suit. It was contended in the rejoinder that the claim of the intervenor applicants was not tenable in law. They had no concern with the disputed land and just in order to delay the disposal of the suit, a vexatious application has been filed at a belated stage.

8. After going through the application filed by the petitioners and the documents submitted therewith and after hearing the parties, the learned Munsif vide impugned order dated 02.07.2018 rejected the application of the petitioners holding therein that it did not appear that the petitioners have got any interest in the subject matter of the suit in question as also that the application was filed at a very belated stage when the arguments



were going on in the case and since the petitioners belonged to the same village to which the parties to the suit belonged, it is not expected that they had no knowledge about the ongoing proceeding of the suit.

9. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief.

10. In ***Mumbai International Airport (P) Ltd. Vs. Regency Convention Centre & Hotels (P) Ltd.***, since reported in **(2010) 7 SCC 417**, the Supreme Court considered the scope of Order 1 Rule 10(2) of the CPC and observed :

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:



“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.”

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to



completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

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19. Referring to suits for specific performance, this Court in *Kasturi* [(2005) 6 SCC 733], held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is sought to be enforced or their legal representatives; (ii) a transferee of the property which is the subject-matter of the contract. This Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant vendor will not be a necessary party.

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22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said



sub-rule is not about the *right* of a non-party to be impleaded as a party, but about the *judicial discretion* of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.”

11. The ratio laid down by the Supreme Court in ***Mumbai International Airport (P) Ltd.*** (Supra) is squarely applicable to the facts of the present case.

12. In the instant case, as the court has considered the claim of the petitioners and examined the documents submitted by them and has come to the conclusion that the petitioners could not bring any document in order to support that they have any interest in the land in question, no error can be found with the order impugned.



13. There is no material on the basis of which this Court may come to a conclusion that the petitioners were either necessary or proper parties.

14. Hence, I am not inclined to interfere with the order impugned in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India as the order is neither without jurisdiction nor perverse.

15. The application is dismissed.

(Ashwani Kumar Singh, J)

pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.05.2019
Transmission Date	

