

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.176 of 2020

Md. Fakre Alam Son of Late Md. Ali, Resident of Nagra, P.S.-Nathnagar,
District-Bhagalpur,.

... .. Petitioner/s

Versus

1. Hassan Akhtar Son of Late Abdul Mazid Resident of Nagra, P.S.-Nathnagar (Champaanagar) District-Bhaglpur.
2. Buland Akhtar Son of Late Abdul Mazid Resident of Nagra, P.S.-Nathnagar (Champaanagar) District-Bhaglpur.
3. Jamil Ansari Son of Late Abdul Mazid Resident of Nagra, P.S.-Nathnagar (Champaanagar) District-Bhaglpur.
4. Md. Shamsheer Son of Md. Mustafa. Resident of Nagra, P.S.-Nathnagar (Champaanagar) District-Bhaglpur.
5. Md. Khurshid Son of Md. Mustafa Resident of Nagra, P.S.-Nathnagar (Champaanagar) District-Bhaglpur.
6. Md. Ashfaque Son of Md. Nasim Resident of Nagra, P.S.-Nathnagar (Champaanagar) District-Bhaglpur.
7. Md. Shahnewaz, Son of Md. Nasim Resident of Nagra, P.S.-Nathnagar (Champaanagar) District-Bhaglpur.
8. Md. Shahbaz Mintu Son of Md. Nasim Resident of Nagra, P.S.-Nathnagar (Champaanagar) District-Bhaglpur.
9. Md. Nawaz, Son of Late Samis @ Md. Nasim Ansari Resident of Nagra, P.S.-Nathnagar (Champaanagar) District-Bhaglpur.
10. Md. Mukhtar Son of Late Md. Salim Resident of Muhalla-Habibpur, P.S.-Habibpur, District-Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Diwakar Upadhyaya, Advocate.
For the respondent Nos. 1 to 9	:	Mr. Madan Mohan, Advocate Ms. Pallavi Pandey, Advocate Mr. Mohit Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 10-10-2022 Heard Mr. Diwakar Upadhyaya, learned counsel for

the petitioner and Mr. Madan Mohan for respondent Nos. 1 to 9.

No one appears for respondent No. 10.

2. The petitioner is aggrieved by the order dated



11.12.2019 passed by the learned Sub Judge-I, Bhagalpur, in Title Suit No. 376 of 2016, by which, a petition filed by the petitioner under Order I Rule 10(2) read with Section 151 of the Civil Procedure Code for his impleadment as defendant in the suit has been rejected.

3. Learned counsel for the petitioner submits that by way of an oral *Hibba* the respondent/plaintiff No. 2 in the suit namely, Md. Buland Akhtar, transferred the suit land in favour of the petitioner on 5.12.2012. The petitioner was thereafter put in peaceful possession over the suit land and has been enjoying the possession of the land since then and paying rent to the Government. He further submits that petitioner is in possession of the land and his name was also mutated with regard to the suit land, but due to certain dispute raised by others, the petitioner filed a Title Suit No. 74 of 2014 against Buland Akhtar respondent No. 2 herein which was decreed on the basis of compromise entered into between the petitioner and the respondent No. 2 vide a decree dated 7.11.2014.

4. Learned counsel further submits that another suit bearing Title Suit No.356 of 2015 was filed by the



respondent No. 10 herein, as plaintiff, on the basis of an oral *Hibba* allegedly executed by the same respondent No. 2 namely, Buland Akhtar, in his favour and that suit was also decreed on compromise between the plaintiff and respondent No. 2 vide decree dated 5.2.2016. In the aforesaid background, another suit was filed with regard to the subject land bearing Title Suit No. 376 of 2016 by respondent Nos. 1 to 9 herein, i.e. plaintiffs, against the respondent No. 10, who was plaintiff of Title Suit No. 356 of 2016, for declaration of right, title and interest upon the suit land and for declaration that the alleged compromise decree dated 5.2.2016 passed in Title Suit No. 356 of 2015 has been obtained by fraud and is not binding upon the plaintiffs i.e. respondent Nos. 1 to 9 and further decree for permanent injunction has also been prayed by the plaintiffs/respondents.

5. Learned counsel submits that since the petitioner is in possession of the suit land from the date of *Hibba* executed by Md. Buland Akhtar in his favour on 5.12.2012 and from the date when a compromise decree was drawn in which Md. Buland Akhtar was also one of the



party, the petitioner is directly and legally interested in the outcome of the present suit. Accordingly, the petitioner filed a petition for his impleadment as a party in the suit, but the learned Trial Court has rejected the petition on the ground that Md. Buland Akhtar was examined as Court Witness and the petitioner was given opportunity to cross-examine him and in his deposition, Md. Buland Akhtar has categorically stated that he has not executed any *Hibba* in favour of the petitioner.

6. On the other hand, learned counsel for the respondents submits that petitioner is not the necessary party inasmuch as the compromise decree passed in Title Suit No. 74 of 2014 dated 7.11.2014 was obtained by the petitioner by fraud, for which, the respondent No. 2 has lodged a case being Nathnagar P.S. Case No. 630 of 2018 which is still pending and charge sheet has been submitted against the petitioner. Learned counsel further submits that Miscellaneous Case No. 69 of 2014 has been filed by Respondent No. 2, Md. Buland Akhtar, for setting aside the compromise decree passed in Title Suit No. 74 of 2014. He next submits that mutation done in favour of the petitioner



has also been cancelled by the competent authority.

7. I have heard learned counsel for the parties.

8. From the arguments and facts involved in this case, it appears that the same land is involved in all the three suits, one filed by the petitioner bearing Title Suit No. 74 of 2014, another filed by respondent No. 10 bearing Title Suit No. 356 of 2015 and Title Suit No. 376 of 2016 filed by respondent Nos. 1 to 9.

9. In the case of ***Ramesh Hira Chand Kunda Mal*** ***v. Municipal Corporation of Greater Bombay*** reported in ***(1992) 2 SCC 524***, the Hon'ble Apex Court made a distinction between direct interest, legal interest and commercial interest and quoting the case of Razia Begum in para-10 of this judgment, it has been held that a person may be added as party to the suit, he should have interest in the subject matter of litigation whether it be a question relating to movable or immovable property. The same paragraph is hereby quoted for ready reference.

“10. The power of the Court to add parties under Order I Rule 10, CPC, came up for consideration before this



Court in Razia Begum (AIR 1958 SC 886). In that case it was pointed out that the Courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the Court and that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject-matter of the litigation whether it be the questions relating to moveable or Immovable property.

10. In paragraph-14 of the said judgment, the Hon'ble Supreme Court has laid down the true test for addition of parties which is as follows:-

“14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and



the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.

The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.

Similar provision was considered in **Amon v. Raphael Tuck & Sons Ltd. (1956) 1 All E.R.273**, wherein after quoting the observations of Wynn-Parry, J. in **Dollfus Mieg et Compagnie S.A. v. Bank of England (1950) 2 All E.R. 611**, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:

The test is 'May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights.'

11. In my opinion, in the facts of the present



case, particularly the fact that the petitioner has got a decree in his favour pertaining to the suit land in the year 2014 itself and the decree has not yet been reversed or modified or set aside by any competent Court, he has some legal interest in the suit land and is strictly concerned with the outcome of the suit inasmuch as the result of the litigation may deprive him legally and may curtail his legal right which he has got by way of a compromise decree relating to the suit land.

12. In view of the aforesaid discussion, I come to the conclusion that the petitioner if not a necessary party is at least a proper party in the present suit.

13. Accordingly, this application is allowed and the order dated 11.12.2019 passed by the learned Sub Judge-I, Bhagalpur, in Title Suit No. 376 of 2016 is set aside. The petitioner is directed to be impleaded as defendant in Title Suit No. 376 of 2016.

(Anil Kumar Sinha, J)

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