

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.407 of 2022

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Arun Kumar Singh son of Late Sheo Rakshya Singh resident of Village-
Karpatai, P.O.- Manika, P.S.- Aurangabad and District- Aurangabad.

... .. Petitioner/s

Versus

1. Sanjay Kumar Singh son of Late Sheo Rakshya Singh resident of Village-
Karpatai, P.O.- Manika, P.S.- Aurangabad and District- Aurangabad.
2. Prabhat Pawar son of Sri Sanjay Kumar Singh resident of Village- Karpatai,
P.O.- Manika, P.S.- Aurangabad and District- Aurangabad.
3. Anil Singh son of Late Bindeshwari Singh resident of Village- Karpatai,
P.O.- Manika, P.S. and District- Aurangabad.
4. Smt. Keshari Devi wife of Sri Ganesh Yadav resident of Village- Chand
Bigha, P.O.- Nima Ajan, P.S. and Anchal- Madanpur and District-
Aurangabad.
5. Smt. Bhagvatiya Devi wife of Sri Jagdish Yadav resident of Village- Chand
Bigha, P.O.- Nima Ajan, P.S. and Anchal- Madanpur and District-
Aurangabad.
6. Deonandan Yadav son of Late Chandradeo Yadav resident of Village- Reua,
P.O.- Purnadih, P.S. and Anchal- Madanpur and District- Aurangabad.
7. Vindu Yadav son of Late Chandradeo Yadav resident of Village- Reua, P.O.-
Purnadih, P.S. and Anchal- Madanpur and District- Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Vyas Kumar Mishra
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 03-11-2022

Heard learned Counsel for the petitioner.

By order, dated 01.02.2022, passed in Title Suit No.
65 of 2020, the learned Trial Court has rejected the petition filed
by the petitioner, under Order I Rule 10 (2) of the Code of Civil
Procedure, for his impleadment as defendant in the suit.

Title Suit No. 65 of 2020 was filed by the respondent
nos. 1 and 2-plaintiffs for declaration that Schedule-A property



mentioned in the plaint of the suit exclusively belong to them with full right and title and the defendants have no concern with the said property and further for a declaration that sale deed no. 55, dated 03.01.2019, sale deed no. 118, dated 04.01.2019 and sale deed no. 3748, dated 25.03.2019, said to be executed by defendant no. 1-respondent no. 3, are null and void and not binding upon the plaintiffs-respondent nos. 1 and 2.

The petitioner filed a petition, under Order I Rule 10(2) of the Code of Civil Procedure on 06.12.2021, praying therein to implead him as defendant in the suit on the ground that the petitioner is the full brother of the plaintiffs-respondent nos. 1 and 2 and the suit property is ancestral property, as such, the petitioner is the necessary party in the suit.

The petition for impleadment filed by the petitioner has been dismissed by the learned Trial Court by the impugned order after arriving at the finding that the petitioner is neither a proper party nor necessary party in the suit inasmuch as the joint property of the family was partitioned between the plaintiffs and the petitioner in Mutation Case No. 131 of 1993-94, and the parties, on the basis of said partition, came in possession of their respective shares voluntarily. The learned Trial Court has also noted the fact that in another suit, bearing Title Suit No. 291 of



2019, filed by the respondent nos. 1 and 2-plaintiffs, the petitioner filed his written statement, in which he has stated that Khata No. 18, Plot No. 195, having an area of 2.10 acres, along with other ancestral properties of the parties have been partitioned by virtue of Mutation Case No. 131 of 1993-94, on 20.01.1994, as recorded in the order passed by the Circle Officer, Madanpur.

The respondent nos. 1 and 2-plaintiffs have also produced 55 sale deeds, executed by the petitioner in favour of various persons in order to buttress the point that the petitioner has already sold the land fallen in his share and he has no concern and/or interest in the suit property, which has fallen in the share of the respondent nos. 1 and 2-plaintiffs by virtue of family partition arrived between the parties.

Accordingly, the learned Trial Court decided that the petitioner is neither a proper party nor a necessary party in the suit and the respondent nos. 1 and 2-plaintiffs, being the *domius litis*, have the right to choose against whom they want to fight the suit.

The Supreme Court, in the case of **Sudhamyee Pattnaik and Others v. Bibhu Prasad Sahoo and Others**, reported in **2022 Livelaw (SC) 773** :(Civil Appeal No. 6370 of



2022), has held that plaintiffs are the *dominus litis* and unless the court suo motu directs to join any other person, not party to the suit, for effective decree and/or for proper adjudication as per Order I Rule 10 of the Code of Civil Procedure, nobody can be permitted to be impleaded as defendant against the wish of the plaintiffs.

In the present case, I find that the petitioner has filed a petition for his impleadment in the suit as defendant merely on the ground that he is the full brother of respondent nos. 1 and 2-plaintiffs and that the property in question is ancestral property.

Insofar as the first ground of the petitioner that he is entitled to join the issue with the plaintiffs merely on the basis of his being the full brother of the respondent no. 1 and 2-plaintiffs is not tenable in law and secondly, the plea of the petitioner that the properties involved in the suit is ancestral property, is also not tenable in view of the statement made by the petitioner himself in the written statement filed by him in T. S. No. 291 of 2019, filed by the plaintiffs that the ancestral property has already been partitioned in the year 1993-94.

Accordingly, I come to the conclusion that the petitioner has got no legal interest in the property involved in the suit and in absence of the petitioner, the Court can



effectively and completely adjudicate all the questions involved in the suit. Thus, the impugned order does not warrant any interference by this Court.

This application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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