

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1620 of 2018

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Rajesh Kumar, Son of Sri Upendra Rai, Resident of Village and P.O.-
Kussaiya, P.S. Waris Nagar, District- Samastipur.

.. ... Petitioner/s

Versus

1. Kappo Devi Wife of Late Sanichar Rai.
2. Bhola Rai, Son of Late Sanichar Rai.
3. Debu Rai, Son of Late Sanichar Rai.

All are resident of Village and P.O.- Kussaiya, P.S. Waris Nagar, District-
Samastipur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Dr. Om Prakash Om, Advocate

For the Respondent/s : Mr. Anirudh Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

5 19-06-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed for issuance of an appropriate writ, order or direction for quashing the order dated 14.09.2018 passed by the learned Sub-Judge-1st, Samastipur in Title Suit No. 261 of 2016, whereby and whereunder the learned Court below has rejected the petition of the petitioner for his impleadment under Order 1 Rule 10 (2) C.P.C.

3. The brief facts of the case are that the respondents who are plaintiffs in the Court below have filed the Title Suit



bearing Title Suit No. 261 of 2016 for declaration of their right, title and possession over the suit land against the State of Bihar and others. The petitioner filed an intervention petition to intervene in the proceeding of the title suit on the ground that petitioner had filed CWJC No. 8661 of 2015 in the nature of Public Interest Litigation (hereinafter referred to as 'PIL') relating to encroachment of public path/public road by respondent nos. 2 and 3 in which vide order dated 04.02.2016, the said writ petition was disposed of with a direction to the District Magistrate, Samastipur and Sub-Divisional Officer, Samastipur to act in accordance with law and in view of the said direction proceeding was started by Sub-divisional Officer, Samastipur.

4. Learned counsel for the petitioner submits that the learned Court below passed the impugned order overlooking the factual aspect of the case and materials available on the record that the petitioner had filed the PIL against encroachment of the property and accordingly, is an interested party who can assist the Court for arriving at the correct decision. He has further submitted that the learned Court has ample power to add any party or strike off any party if the Court think it necessary for proper adjudication of the dispute in question but the learned



Court below failed to exercise its jurisdiction.

5. On the other hand, learned counsel for the respondents submits that the learned Court below has rightly rejected the petition of the petitioner and held that the petitioner has failed to produce any document with respect to the land in question so that the Court can reach at any decision in this case. The defendants are already contesting the suit and the petitioner has no interest in the suit property, accordingly, he is neither the proper party nor the necessary party it is submitted that the Court has also observed that the petitioner can assist the defendants at his own level. There is no valid ground for interfering in the impugned order by this Court in its supervisory jurisdiction.

6. The provisions of Order 1 Rule 10(2) of the Code are very wide and the powers of the Court are equally extensive. Even without an application to be impleaded as a party, the Court may, at any stage of the proceedings can pass order that the name of any party, 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.



7. It is well settled that the underlying principle regarding the addition of parties is that there must be finality to litigation and to secure that purpose it would be incumbent upon the Court to add a party whose presence would be necessary to put an end to all the controversy in the litigation finally, “questions involved in the suit” referred to in Order 1 Rule 10 means not only the questions involved in the suit originally framed between the parties to the suit but also any dispute between the parties of the suit and a third party, and that the object of the provision is that where several disputes arise out of on subject matter all the parties interested in such disputes should be brought before the Court and all questions in contest between them should be completely settled in the action.

8. The Hon’ble Supreme Court in the judgment reported in **Razia Begum Vs. Sahebzadi Anwar Begum and Ors (AIR 1958 SC 886)** had observed:

“There cannot be the least doubt that it is firmly established as a result of judicial decisions 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 raised questions relating to movable or immovable property”.

9. The Hon’ble Supreme Court in judgment dated 27.09.2022 in **Moreskar Yadaorao Mahajan Vs. Vyankatesh**



Sitaram Bhedi (Civil Appeal No. 5755-5756 of 2011)

reiterated that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party.

10. The Hon'ble Supreme Court in the aforesaid judgment quoted the observation made by Hon'ble Supreme Court in case of **Mumbai International Airport private Limited Vs. Regency Convention Center and Hotels private Limited and Ors. (2010) 7 SCC 417** that 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. It has been held that 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 proper or necessary party, the Court has no jurisdiction to implead him, against the wishes of the plaintiff.



11. Having heard learned counsel for the parties and considering the materials available on record including the impugned order, it appears that the learned Court below has observed the fact that the land in question has been stated in C.S. Khatiyani as Gairmazarua Aam and in R.S. Khatiyani it is recorded as Anabad Sarvsadharan. In that light, the petitioner has made Government of Bihar, Collector, Samastipur and Circle Officer, Wasir Nagar as defendants who are contesting the proceeding in the suit and the petitioner has not produced any document with respect to the suit land in support of his claim so that he can assist the Court in reaching at the right conclusion and there is no requirement of making the petitioner as party in the suit on the basis of his oral statement.

12. The learned Court below has not impleaded the petitioner by the reasoned order. Petitioner is neither a necessary party nor a proper party and as discussed above, if a person is not found to be proper or necessary party, the Court has no jurisdiction to implead him. The learned Court below has not committed any illegality in passing the impugned order. The illegality in passing the impugned order. The Civil Miscellaneous Application is devoid of merit and it liable to be dismissed.



13. This Civil Miscellaneous Application is,
accordingly, dismissed.

(Sunil Dutta Mishra, J)

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