

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.511 of 2018

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Rafat Jahan Daughter of Abdul Sattar, wife of Kaisar Alam @ Qaiser Alam,
Resident of Mohalla - Aliganj, Road No - 12, P.S. - Chandauti, District -
Gaya, Present reside at Mohalla - Nagmatiya Colony, Road No. - 5, P.S. -
Civil Lines, District - Gaya.

... .. Petitioner/s

Versus

1. Mr. M. Anwar Abbas @ Md. Anbar Abbas, son of Late Md. Abbas, Resident of Mohalla - Nagmatiya Colony, P.S. - Civil Lines, District - Gaya.
2. Nasim Abbas, son of Late Md. Abbas Resident of Mohalla - Nagmatiya Colony, P.S. - Civil Lines, District - Gaya. Presently reside at B/4, 3rd Floor, Yasin Apartment, Old Puruliya Road, Mango, District - Jamshedpur, Jharkhand.
3. Md. Parvez Abbas, son of Late Md. Abbas, Resident of Mohalla - Nagmatiya Colony, Swarajpuri Road, P.S. - Civil Lines, District - Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Rai, Advocate
For the Respondent/s : Mr. Shivendra Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 25-08-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 31.01.2018 passed by learned Sub Judge, IV, Gaya in Title Suit No. 75 of 2010 (328 of 2010) whereby and whereunder the learned Court below has allowed the petition dated 27.02.2015 filed by the Intervenor / Respondent IInd Set under Order 1 Rule 10 (2) along with Section 151 of the Code of Civil Procedure.

3. Brief facts of the case are that defendants / respondent



Ist Set made an agreement for sale of the suit house on 09.12.1996 after receipt of Rs. 1,02,000/- and given the possession to the plaintiff / petitioner of the house in suit and plaintiff / petitioner is residing in the said house. The plaintiff / petitioner paid remaining consideration amount on many occasions as per the requirement of defendants / respondent Ist Set and plaintiff / petitioner was always willing and ready to perform her part of the contract but defendants / respondent Ist Set failed to execute the sale deed. Therefore, the plaintiff / petitioner filed the suit in which defendants appeared and filed their written statement and contested the suit. The Intervenor / respondent IInd Set has filed petition for impleadment in the suit under Order 1 Rule 10 (2) along with Section 151 of the C.P.C. on 27.02.2015 on the ground that he is owner of the said house and has a valid title in view of decree in Partition Suit No. 109 of 2005 awarded on 17.12.2006 by Lok Adalat, Gaya. Therefore, she is necessary and proper party in the aforesaid suit. The learned Court below has allowed the impleadment petition dated 27.02.2015 and directed to implead him as a party-defendant No. 3 and also directed to file the written statement. Hence, this application has been filed.

4. Learned counsel for the petitioner submits that the



present suit is related to specific performance of contract and the plaintiff / petitioner can enforce the term of Baibeyana deed against the defendants / respondent Ist Set and Intervenor / respondent IInd Set has no legal right and interest to interfere in the suit. The present suit is not a suit for declaration of title and the learned Court below has impleaded the party-defendant by the impugned order which is not proper and justified and is fit to be set aside. In Support of his contention, he relied on the judgment of Hon'ble Supreme Court in **Anil Kumar Singh Vs. Shivnath Mishra (1995) 3 SCC 147** and **Kasturi Vs. Iyyamperumal and Others (2005) 6 SCC 733**.

5. On the other hand, learned counsel for the respondent No. 3 submits that respondent No. 3 is the owner of the suit house and defendant has no right to transfer the same. Accordingly, respondent No. 3 is a necessary party and the learned Court below has rightly allowed the application of respondent No. 3 to become a party to the suit. There is no valid reason to interfere in the impugned order by this Court in its supervisory jurisdiction.

6. In the case of **Anil Kumar Singh Vs. Shivnath Mishra** (supra), the Hon'ble Supreme Court has held that since the applicant who sought for addition is not a proper party to the



agreement for sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided.

7. The Hon'ble Supreme Court in **Kasturi Vs. Iyyamperumal and others (supra)** observed that:

“.....for deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary party at all.”

8. The Hon'ble Supreme Court in **Vijay Pratap Vs. Sambhu Saran Sinha (1996) 10 SCC 53** held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit for one character into a suit of different character.

9. The Hon'ble Supreme Court in **Moresnar Yadaorao**



Mahajan Vs. Vyankatesh Sitaram Bhedi (D) thr. LRs. and Others (2022 LiveLaw (SC) 802) considering the judgments in **Kasturi Vs. Iyyamperumal and Others (supra); Mumbai International Airport Private Limited Vs. Regancy Convention Centre and Hotels Private Limited and Others (2010) 7 SCC 417; Poonam Vs. State of Uttar Pradesh and Others (2016) 2 SCC 779** observed 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 proceeding. The second one is that no effective decree can be passed in the absence of such a party.

10. Having heard learned counsel for the parties and on perusal of the material on record, it appears from the impugned order that the claim of defendant No. 3 is that entire suit house has been allotted to the defendant No. 3 on payment of the value of the share of defendant No. 2 in the said suit house. Defendant No. 2 is not the owner of the suit property and petitioner has got valid and legal title of the suit house who has filed Tax receipt of the Gaya Municipal Corporation in support of his claim and accordingly, he is a necessary and proper party to the suit.

11. Considering the facts and circumstances of the case and legal provisions as stated above, in view of this Court, there



is no jurisdictional error or illegality in the impugned order and the same does not warrant any interference by this Court in its supervisory jurisdiction.

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

(Sunil Dutta Mishra, J)

ashutosh/-

AFR/NAFR	NAFR
CAV DATE	21.08.2023.
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