

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.758 of 2018**

Kusum Thakur @ Kusum Ray, Wife of Shri Pramod Kumar Thakur, Resident
of Civil Line, Buxar, Police Station and Post Office- Buxar, District- Buxar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Jyoti Shankar, Son of Sri Ashok Ranjan Sharan.
3. Surendra Prasad Srivastava, Son of Late Ganga Lal, Both, residents of Civil
Line, Police Station- Buxar Town, District- Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate Mr. Rajeev Ranjan, Advocate
For the Respondent/s	:	Mr. Md.Khurshid Alam, AAG12 Mr. Sanjay Kumar Verma, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER**

15 20-04-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous application under Article 227 of the Constitution of India has been filed against the order dated 17.04.2018 passed by the learned Sub Judge, Buxar in Title Suit No. 113 of 2016 by which intervention application has been allowed and Respondent Nos. 2 and 3 have been added as Intervenor-defendants.

3. The petitioner is the plaintiff who filed Title Suit No. 113 of 2016 for declaration of his title over the suit land and also declaration that Municipal Survey Khatian entry in the



name of State of Bihar is wrong. The case of the plaintiff / petitioner is that petitioner purchased the suit land from Urmila Devi through registered sale deed and came in possession of suit land and mutation has been done in her favour and paying the rent. It is claimed that Municipal record of rights wrongly made in favour of State of Bihar. However, in the remark column possession of Gauri Shankar Prasad was entered, who is vendor of Urmila Devi.

4. The intervenor-respondents filed a petition under Order 1 Rule 10(2) of CPC on 16.06.2017 for making them as party-defendants on the ground that intervenor has got his house on his ancestral land which is adjacent to the suit land in which applicant open sewer and thus using suit land and he has easementary right of way, sewage etc. Proceeding under Section 107 and 144 Cr.P.C. had been initiated against plaintiff by the petitioner. The same was opposed by the petitioners stating that intervenors have no concern with the suit land. The learned trial Court allowed the intervenor petition vide the impugned order dated 17.04.2018 holding that it is admitted that both parties are neighbors and series of complaint petitions are pending before C.O. and Sub-divisional Public Grievance Officer, Buxar with regard to the disputed land between the parties hence for proper



adjudication and in the interest of justice and to prevent the multiplicity of the suit, the intervenor petition was allowed.

5. Learned counsel for the petitioner submits that intervenors have got not any right, title and interest over the suit land and they are not necessary or proper parties in the suit and as such the impugned order allowing them to be intervenor defendants is bad in law and is fit to be set aside.

6. He has referred Judgment passed by the Hon'ble Supreme Court in the Case of **Sarvinder Singh Vs. Dalip Singh and Ors. 1996 5 SCC 539** and the judgment of this Court passed in **Devendra Prasad Sah and Ors. Vs. Lakshmi Sao @ Laxshmi** reported in **2012 (3) PLJR 277** on the point that the plaintiff is the *dominus litis* and nobody can be permitted to be impleaded as defendant against the wish of the plaintiffs.

7. On the other hand, learned counsel for the respondents submits that the learned trial Court has rightly allowed the impleadment application as intervenors who are litigating with the petitioner with respect to the suit land before the different authorities and their interest are also involved and they are necessary and proper party in the suit and the Court has discretion to add the necessary or proper party in the suit and



when the Court exercise its jurisdiction, it cannot be said that there is any jurisdiction illegality or error in the impugned order for which interference of this Court is required in its supervisory jurisdiction.

8. In support of his argument, learned counsel for respondents placed reliance on the decision of this Court in the case of **Shujan Singh Vs. The State of Bihar** reported in **2022 (3) PLJR 243** in which the Court relied upon the decision of this Court in **Shakuntala Devi and Ors. Vs. Malik Mandal and Ors.** reported in **2008 (1) PLJR 479** and **Dhanurdhar Prasad Singh Vs. Jai Prakash University and Ors. (AIR 2001 SC 2552)** in which it has been held that the prayer for leave to add party can be made not only by a person upon whom interest has been devolved but also by the plaintiff or any other party or person interested.

9. The Hon'ble Supreme Court in the case of **Sarvinder Singh Vs. Dalip Singh and Ors.** (Supra), it is held that "a necessary party is one whose presence is absolutely necessary and without whose presence the issue cannot effectually and completely be adjudicated upon and decided between the parties. A proper party is one whose presence would be necessary to effectually and completely adjudicate



upon the disputes.”

10. This Court in **Devendra Prasad Sah and Ors. Vs. Lakshmi Sao @ Laxshmi** (Supra) in paragraph 7 held as follows:-

“7. It is well settled principles of law that Order 1 Rule 10 CPC speaks about the jurisdiction of the Court and not about the right of a non-party. If it is found that non-party is a necessary party in the suit or property then the Court has the jurisdiction to implead him but non-party cannot insist for being impleaded as party against the wish of the plaintiff, as has been held by Apex Court in (2010) 7 SCC 417 (**Mumbai International Airport Private Limited Vs. Regency Convention Centre**).”

11. The law is well settled that the plaintiff is the *dominus litis* and nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. However, Order 1 Rule 10 CPC clearly provides for the situations where the Court may strike out or add parties in the suit. Order 1 Rule 10(2) CPC for the ready reference is quoted here.

“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.”

12. It is clear from the aforesaid provision that the Court at any stage of the proceeding either upon or without the application of either party can add the parties 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.

13. In the case of **Ashok Vs. The State of Maharashtra and Ors. (Writ Petition No. 10493 of 2022)** vide the Judgment dated 11.10.2022, the High Court at Bombay, Bench at Aurangabad in paragraph 19 and 20 observed:-

“19. The provisions of Order I 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 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.

20. The theory of *dominus litis* cannot be overstretched in the matter of impleading of parties, which results in ineffective decrees being passed in absence of necessary parties or where the theory is misused to deliberately



obtain decree against non-interested persons/officials and then use it to assert rights of Plaintiff. It is also for the Court to ensure that the real matter in dispute is effectively decided by impleading all those who are necessary parties. Merely because plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded. If the Court feels it appropriate that any particular party's presence is necessary before the Court for adjudicating upon the issue involved in the suit, the Court has full power under Order I Rule 10(2) of the Code to direct addition of such party to the suit.”

14. In the Judgment of Hon'ble Supreme Court in **Mumbai International Airport (P) Ltd. Vs. Regency Convention Centre and Hotels (P) Ltd.** reported in (2010) 7 SCC 417 observed that the general rule in regard to impleadment of parties is that in a suit, being *dominus litis*, may choose the person 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) CPC which provides for impleadment of proper or necessary parties. It is further held that 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. The discretion under the sub-rule can be exercised *suo motu* or on 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 add anyone as a plaintiff or defendant if it finds that he is a necessary party or proper party.

15. In the present case, the learned trial Court vide the impugned order found that there are series of complaint petitions are pending before the authorities with regard to disputed land between the parties and in the interest of justice and to prevent the multiplicity of the suit, the intervenor petition was allowed. The learned Court below has exercised its judicial discretion assigning the reason for the same which is justified.

16. As discussed above, I do not find any illegality or jurisdictional error in the impugned order to interfere with by this Court in the supervisory jurisdiction under Article 227 of the Constitution of India.

17. This Miscellaneous application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

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