

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.810 of 2018

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Ram Chandra Prasad Keshri, Son of Late Saryug Prasad Sah, Resident of
Mohalla - Madhubani, P.S. K. Hat, District - Purnea.

... .. Petitioner/s

Versus

1. Kapildev Prasad Sinha, Son of Late Surendra Prasad Sinha, Resident of Village - Sipaitola, P.S. K. Hat, District - Purnea.
2. Smt. Rimjhim Sinha, Wife of Sri Sakalbandu Sharan Sahastransu, Resident of Chunapur Road, P.S.K. Hat, District - Purnea.
3. Amal Kumar Singh, Son of Sri Dev Narayan Singh, Resident of Madhubani, Kamlanagar, P.S. K. Hat, District Purnea.
4. Vijay Yadav, Son of Late Ganauri Yadav, Resident of Kali Prasad Tola, Madhubani, P.S. K. Hat, District Purnea.
5. Poonam Devi, Wife of Late Ashok Prasad Keshri, Resident of Madhubani, P.S. K. Hat, District Purnea.
6. Santosh Kumar Singh, Son of Lal Bihari Singh, Resident of Mohalla - Mahrati Hata, Janta Chowk, P.S. K. Hat, District - Purnea.
7. Saroj Kumar Singh, Son of Bijendra Prasad Singh, Resident of Mohalla - Sukh Nagar, Maithil Tola, P.S. K. Hat, District Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abbas Haider, Advocate, Mr. Ranjay Kumar Singh, Advocate
For the Respondent/s	:	Mr. Arun Prasad Ambastha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

9 20-04-2023 This Civil Miscellaneous application has been filed under Article 227 of the Constitution of India for setting aside the order dated 22.08.2016 whereby the learned Court below allowed the petition dated 19.09.2015 filed by defendant 1st set / respondent 1st set (respondent Nos. 1 to 4) under Order 1 Rule 10 (2) of the Code of Civil Procedure.

2. Petitioner is the plaintiff who filed title suit bearing



Title Suit No. 409 of 2013 for declaration that registered sale deed No. 13188 dated 19.09.2013 executed by defendant No. 2nd party (respondent No. 5) in favour of defendant 1st party is illegal, void ab-initio and not binding on the plaintiff / petitioner and also for restraining the defendant 1st set / party from interfering with the peaceful possession of the plaintiff over the suit land. The claim of the plaintiff / petitioner is that the petitioner is the exclusive owner of the suit land which was allotted to him in the compromise decree in Title Suit No. 210 of 1970. However, part of the suit land has been sold by defendant 2nd set / respondent No. 5 in favour of defendant 1st set.

3. The defendant 1st party appeared and contested the suit by filing their written statement. The case of the defendant 1st party is that defendant No. 5 Poonam Devi is wife of Late Ashok Prasad Keshri who acquired right, title and interest on the suit land in place of her husband from whom they purchased the suit land and taken possession of the same, got their name mutated in their name and land rent receipt have been issued in their favour.

4. During the pendency of the suit, defendant 1st party / respondent 1st set filed an application under Order 1 Rule 10(2)



of CPC on 19.09.2015 for impleading the purchasers of the portion of the suit land vide two sale deeds dated 19.08.2015 executed by the plaintiff. It is stated in the said petition that plaintiff has sold the portion of suit land to disturb the peaceful possession of purchased land of defendant 1st party and they are necessary party in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the present suit. The plaintiff / petitioner opposed the impleadment petition by filing the rejoinder stating that plaintiff is master of his own case and has impleaded necessary party in the suit. The trial Court vide the impugned order dated 22.08.2016 has allowed the said petition for impleadment of the purchasers of the part of suit land sold by the plaintiff.

5. Heard learned counsel for the petitioner. No one is present on behalf of defendants despite opportunity given.

6. Learned counsel for the petitioner submits that the sale deed executed by the defendant 2nd set in favour of defendant 1st set is illegal and void. The plaintiff has sold his share to the proposed intervenor who are not the necessary party in this case as no relief has been claimed in the said suit against them. He has further submitted that the petition for implementation has been filed by the defendant 1st set and not



by the intervenor vendee but the Court has wrongly allowed the petition of the petitioner. He has referred and relied on various Judgments including the Judgment passed by the Hon'ble Supreme Court in the Case of **Sarvinder Singh Vs. Dalip Singh and Ors. (1996 5 SCC 539)** and judgment of this Court passed in **Devendra Prasad Sah and Ors. Vs Lakshmi Sao @ Laxshmi Sah and Ors.** 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 party defendant against the wish of the plaintiff.

7. The scheme of C.P.C. stipulates that in Civil Suit, all questions and issues that may arise, must be decided in one and the same trial. Order I and Order II which relate to parties to suits and frame of suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common question of law and facts could be decided at one go. As a trial continues between specific parties before the Court and based on available pleadings, sometimes at the time of execution, a person who is not party to the suit, at time claims separate rights or interest rise to the requirement of determination of new issues.

8. Order 1 Rule 10 CPC clearly provides for the



situations where the Court may strike out or add parties in the suit. For better understanding of the controversy, let me first reproduce Order 1 Rule 10(2) CPC which reads as under:-

“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.”

9. 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 whether as plaintiff or defendant, whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The wide judicial discretion has been conferred on the Court. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the Court will of course act accordingly to reason and fair play and not according to whims and caprice.



10. The Hon'ble Supreme Court in the case of **Sarvinder Singh Vs. Dalip Singh and Ors.** (Supra) 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."

11. 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**)."

12. 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.

13. 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. The Hon'ble Supreme Court in the judgment dated 16.09.2022 in the case of **Sudhamayee Pattnaik and Ors. Vs. Bibhu Prasad Sahoo and Ors. (Civil Appeal No. 6370 of 2022)** reiterated the said principle.

14. Having heard the learned counsel for the



petitioner and perused the material on record and the impugned order, it appears that in the present case the learned trial Court observed that the proposed intervenors are the purchasers of the suit land and their interest is also involved in the suit land. Accordingly, the trial Court allowed the petition for impleading the intervenors as defendants. The learned trial Court has exercised its judicial discretion considering the facts and circumstances of the case and assigning the reason for the same. The trial Court is justified in impleading the intervenors as defendants in view of the settled law on this point as discussed.

15. The Court can add anyone as a plaintiff or defendant if it finds that he is a necessary party or proper party for adjudicating upon the issue involved in the suit. Merely because plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded.

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.

18. The matter is pending since 2013. Accordingly,



the trial Court is directed to expedite the disposal of the suit and
the parties are also directed to cooperate the trial Court for
expeditious disposal of the suit.

(Sunil Dutta Mishra, J)

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