

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.194 of 2017

1. Mosmat Chhathia Kuwar, W/o late Suryawanshi Chaudhary
2. Surendra Chaudhary S/o late Suryawanshi Chaudhary
3. Kundan Chaudhary S/o Surendra Chaudhary
4. Raj Kumar Chaudhary
5. Santosh Chaudhary both Sons of Mahendra Chaudhary
6. Manoj Chaudhary S/o Nandu Chaudhary
7. Sanoj Chaudhary S/o Nandu Chaudhary
8. Mosmat Girija kumar W/o late Netlal Chaudhary
9. Anil Chaudhary
10. Sunil Chaudhary both sons of late Netlal Chaudhary
11. Dukhi Chaudhary S/o late Ram Charitar Chaudhary
12. Dilip Chaudhary
13. Sanjit
14. Bishwajit All sons of Dukhi Chaudhary All are resident of Village-
Chaudhary Mohalla- Post Office and Police Station- Dehri, District- Rohtas.

... .. Petitioner/s

Versus

1. Dilip Sarawagi
2. Ashok Sarawagi both sons of late Damodar Sarawagi
3. Uma Devi W/o Ashok @ Nankhu Bhaua
4. Parmod Tiwary S/o Unknown Resident of Mohalla- Pali Road, Post Office
and Police Station- Dehri, District- Rohtas.
5. Mosmat Raj Kumari Kuwar W/o late Ram Keshwar Singh
6. Punam Singh W/o Birendra Singh
7. Sanjay Sinha S/o Jangbahadur Singh
8. Yashwant Kumar Singh
9. Satendra Narayan Singh
10. Birendra Singh S/o Nathuni Singh All are resident of Mohalla- Tirgun Dehri,
PaliRoad, Biran Bigha, War No. -28, Post Office and Police Station- Dehri,
District- Rohtas.
11. Smt. Renu Singh W/o lalu Singh Resident of Mohalla Gandhi Nagar, Dehri ,
Post Office- Dehri , District- Rohtas.
12. Bijay Chaudhary S/o late Guru Mallah Resident of Mohalla, Post Office,
Police Station- Dehri, District- Rohtas.
13. Saryu Chaudhary S/o Late Hari Chaudhary
14. Uma Shankar Chaudhary
- 1.



14. Ram Shankar Chaudhary
- 2.
14. Niraj Kumar Chaudhary All sons of late Bishwanath Chaudhary, resident of
3. Mohalla- Purani Pani tanki, Dehri Ward no. 26, Police Station- Dehri , District- Rohtas.
15. Shambhu Chaudhary S/o late Sobh Natrh Chaudhary Resident of Mohalla- Purani Pani Tanki, Dehri Ward No. -26, Post Office and Police Station- Dehri , District- Rohtas.
16. Ashok Chaudhary
17. Krishna Chaudhary Both Sons of late Mundrika Chaudhary
18. Sikandra Chaudhary S/o late Ram Charitar Chaudhary
19. Mahendra Chaudhary
20. Nandu Chaudhary both sons of late Mundrika Chaudhary
21. Shiv Kumar Chaudhary S/o Mahendra Chaudhary Serial Nos. 16 to 24 all are resident of Mohalla- Chaudhary Mohalla- Post office and Police Station- Dehri , District- Rohtas.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Santosh Chandra Bhaskar, Advocate
For the Respondent/s : Mr. Jitendra Prasad Singh, Advocate
Mr. Din Bandhu Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

5 22-03-2023 Heard learned counsel for the parties.

2. The instant Civil Miscellaneous application has been filed under Article 227 of the Constitution of India for quashing the order dated 06.01.2017 passed in Title Suit No. 192 / 2011 by the learned Sub-Judge -V, Sasaram whereby the learned Court below rejected the amendment petition dated 28.11.2016 of the plaintiff / petitioners for addition of Ansuiya Tiwari, Neelam Devi and Ritwik Kumar as defendant Nos. 24, 25 and 26 respectively.

3. It appears from the record that plaintiffs /



respondents have filed Title Suit bearing T.S. No. 192 / 2011 for declaration of 'suit property' as ancestral property of the plaintiffs / petitioners. It is stated that defendant No. 7 in his written statement has stated that portion of suit property was purchased by his wife Ansuiya Tiwari and defendant No. 10 also in his written statement disclosed that portion of disputed property was also purchased by his wife Nilam Devi and his son Ritwik Kumar. Accordingly, the plaintiffs/petitioners filed petition for addition of their names as defendant No. 24 to 26 respectively.

4. Learned counsel for the petitioners submits that the said persons are necessary party for proper adjudication of the case as no effective decree can be passed in their absence. Accordingly, they may be allowed to be made party so that the proper adjudication may take place. Accordingly, he has prayed to set aside the impugned order and aforesaid persons may be permitted to be made as respondent Nos. 24, 25 and 26 in the suit.

5. Learned counsel for respondent Nos. 1 and 2 who are the contesting parties before the trial Court submits that he has no objection for allowing this application and for making the said persons as defendant Nos. 24 to 26 respectively in the



suit as they are the necessary party.

6. Learned counsel for respondent Nos. 4, 8, 9 and 12 also appears and submits that although no relief has been claimed against proposed defendants, however, he has no objection if they are made party in the suit.

7. The law is well settled 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. If the 'necessary party' is not impleaded, the suit is itself 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 suit, though he need not be a person in favour of or against whom the decree is to be made.

8. From perusal of the impugned order dated 06.01.2017 it appears that the application of the petitioners was dismissed with observation that there is no relief prayed against the proposed defendants in the suit and the suit is at the stage of recording of evidence on behalf of the plaintiffs and if proposed defendants are made party, the suit shall come at the stage of *De Novo* trial which is not in the interest of justice.

9. Having heard the learned counsel for the parties



and on perusal of materials on record, it appears that defendant Nos. 7 and 10 in their written statement specific objection was taken that part of suit property had been sold to proposed defendants accordingly right and interest has been created in favour of the proposed defendants. It is in the interest of justice that the proposed defendants be made party in the suit.

10. Accordingly, this Civil Miscellaneous application is allowed. The impugned order dated 06.01.2017 is set aside and petition dated 28.11.2016 filed on behalf of the petitioners for addition of proposed defendants in the said suit is allowed.

11. Since the suit bearing Title Suit No. 192 / 2011 is pending since 2011, the learned trial Court is directed to expedite the disposal of the suit. Parties are also directed to cooperate the learned trial Court for early disposal of the suit in accordance with law.

12. This Civil Miscellaneous application is, accordingly, disposed of with the aforesaid observation and direction.

(Sunil Dutta Mishra, J)

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