

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1428 of 2016

=====

Ratan Kumar Sarawgi, son of Late Ram Prasad Sarawgi alias Murlidhar Sarawgi, resident of Mohalla Sarawgi Chowk, Ward No. 10, Sitamarhi Municipality, Police Station Sitamarhi, Circle Dumra, Subdivision Sitamarhi, Sadar, District Sitamarhi.

... .. Petitioner/s

Versus

1. Vishwanath Sarawgi alias Murlidhar Sarawgi, son of late Ram Prasad Sarawgi.

2. Adarsh Sarawgi, son of Vishwanath Sarawgi

3. Smt. Puja Sarawgi wife of Adarsh Sarawgi

All resident of Mohalla Sarawgi Chowk, ward No. 10, Sitamarhi, Municipality Police Station – Sitamarhi, Subdivision Sitamarhi Sadar, District- Sitamarhi.

4. Sanchit Sarawgi son of Anil Sarawgi resident of village Sarawgi Chowk Sitamarhi P.S. Sitamarhi District – Sitamarhi

At present resident of Radhey Krishna Market Ring Road, Surat.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ganpati Trivedi, Sr. Advocate Mr. Najmul Hoda, Advocate
For the Respondent/s	:	Mr. J.S. Arora, Sr. Advocate Mr. Bachan Jee Ojha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 08-08-2023

Heard Mr. Ganpati Trivedi, learned senior counsel for the petitioner and Mr. J.S. Arora, learned senior counsel for the respondents.

2. This Writ Application has been filed against the order



dated 19.11.2015 passed by the learned Sub Judge-V, Sitamarhi passed in Eviction Suit No. 02 of 2011 allowing the application of the intervenor / respondent No. 4 filed under Order 1 Rule 10 and Section 151 of the Code of Civil Procedure for adding him as a party.

3. The brief facts of the case are that the plaintiff / petitioner has filed Eviction Suit No. 02 of 2011 for eviction of defendant-respondent Nos. 1 to 3 from the suit premises on the ground of default and personal necessity and for arrears of rent and other formal reliefs. The case of the plaintiff-petitioner is that his father died in the year 1955 leaving behind three sons namely, plaintiff / petitioner, defendant / respondent No.1 and Hari Prasad Sarawgi. Through a registered sale deed of the partition dated 19.12.1988 vide deed No. 10238 the heirs partitioned all the properties. After partition, the parties applied for mutation and were mutated and are paying rent. In partition, the suit premises fell in the share of the plaintiff which is mutated in his favour and is paying rent to the State of Bihar on grant of rent receipt and the petitioner constructed new buildings on the same. The defendant No. 1 did not get any residential house and took the suit premises on rent since the suit premises was situated in prime location of the Town. The



premises was let out with effect from 01.01.1991 on monthly rent of Rs. 36,000/- and gradually the rent has been increased to Rs. 50,000/-. In March, 2009, on ground of personal necessity for personal use for expansion of his business, the plaintiff requested the defendants to vacate the suit premises but they failed to comply the same and became defaulter. Hence, the aforesaid Eviction Suit has been filed.

4. Defendant No. 1 filed his Written Statement. Defendant Nos. 2 and 3 also filed their separate written statement who are son and daughter-in-law of defendant No.1. P.W. 1 to 5 were examined. At this stage, Sanchit Sarawgi the grandson of defendant No. 1 filed an application dated 01.05.2014 under Order 1 Rule 10 and Section 151 C.P.C. for his addition as party on the ground that he has some share in the suit property; the registered deed of partition dated 19.12.1988 was fraudulent as it shows unequal division of properties amongst the decendants of Late Ram Prasad Sarawgi and his interest was not considered and accordingly, he is a necessary party. The plaintiff-petitioner filed rejoinder that the grandson of defendant No. 1 has intervened at the instance of defendant No. 1 only to delay in disposal of the suit. On the date of registered partition deed dated 19.12.1988, petitioner was not born and he was born in



year 1993 only and is resident of Surat in Gujarat and the interest of family was represented through Karta defendant No.

1. The learned Court below allowed the intervention petition.

5. Mr. Ganpati Trivedi, learned senior counsel has submitted that the learned trial Court failed to consider that defendant No. 1 is grandfather of intervenor who has filed written statement and was contesting the suit. Defendant No. 1 in his written statement admitted that he was Karta and manager of his family and the said fact has also been admitted by defendant Nos. 2 and 3 and in their written statement they specifically admitted in paragraph 11 that there had been a family arrangement on 19.12.1988 in which defendant No. 1 was first party. Hari Prasad Sarawgi was 2nd party and the plaintiff was 3rd party. He further submits that defendant No. 1 has not assailed the said registered deed of partition nor he sought cancellation on the ground that it being forged or fraudulent. He has next submitted that defendant No. 1 who is grandfather of Intervenor acknowledging the said partition dated 19.12.1988 executed several sale deeds to the properties which was allotted to him in their share. The Intervenor is neither a necessary party nor proper party in the suit and has no interest in the suit premises.



6. He has further submitted that suit had been filed for eviction under BBC Act on ground of default and personal necessity. However, an alternative relief for eviction on the basis of title of the petitioner had been made in relief in para 19 (Ka) of the plaint that in case the defendant denies the title of the plaintiff, then the Court will declare plaintiffs' title and due to that reason he paid ad valorem Court fee. The amendment was formal in nature and not changed the nature of suit. Learned senior counsel for petitioner has further submitted that defendant No. 1 on the basis of registered family settlement dated 19.12.1988 has gifted a portion of suit Plot No. 87 vide gift deed executed on 27.05.2011 wherein he has accepted the petitioner in northern and eastern boundary which clearly shows that defendant No. 1 has already accepted the partition deed dated 19.12.1988 and he cannot denied the same at this stage.

7. Per contra, learned senior counsel Mr. J.S. Arora for respondents has submitted that the Eviction Suit filed by the petitioner was in fact a suit for declaration of title and recovery of possession in respect of the ancestral properties by alleging previous partition. The plaintiff amended the valuation of Court fee portion of plaint and in relief No. 19 (Ka), it was incorporated that if defendant denies title of the plaintiff, then



Court be pleased to declare plaintiff's title of the suit property for which ad valorem Court fee has been paid. Further, he has submitted that the learned Court below has rightly passed order for addition of the respondent No. 4 as party since the adjudication of title will directly affect the respondent. The petitioner failed to point out any error of law or jurisdictional error committed by the learned court below. It is settled law that if a party is being prejudiced from the outcome of a suit, then he is a necessary or proper party to the said suit and he must be allowed to be added as party to the suit. If respondent No. 4 is not allowed to be added as a party in the suit, he will be highly prejudiced from the outcome of the aforesaid suit. Further, he has submitted that suit property is a joint family property and the respondent is major and as a coparcener / co-sharer in the property in suit, he has got every right to protect his interest in the said property.

8. Learned senior counsel for respondents has further submitted that even if a decree is granted in favour of the plaintiff, the respondent No. 4 who is in possession of the suit property, may object to the execution of the said decree on the ground that he was not made party to the suit despite being in possession of the same. The Court has a duty to see whether the



presence of the proper parties would facilitate the complete determination of the matter in dispute.

9. 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 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.

10. 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.

11. 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”.

12. The 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** observed that the Court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. 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.

13. This Court in **Md. Sahood Alam Vs. Md. Nayyer (2016) (1) PLJR 307** observed that the *inter se* dispute between the defendants cannot be decided in a suit filed by the plaintiff. Order 1 Rule 10 C.P.C. speaks about the jurisdiction of the Court not the right of a party for being added as defendant. If the intervenors are not necessary party and in absence of the intervenors, if the dispute raised between the parties can be effectively decided by the Court, the Court should not add a person whose presence is not required for just decision of the case.

14. In **Rameshchand Kundanmal Vs. Municipal Corporation of Greater Bombay (1992) 2 SCC 524** the Apex Court held in paragraph 14 as under:

“It cannot be said that the main object of the rule is to prevent multiplicity of action though it may incidentally have that effect....It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e. he can say that litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to



prosecute his own cause of action.”

15. In **Vidur Impex and Traders (P) Limited and Others Vs. Tosh Apartments (P) Ltd. (2012) 8 SCC 384** in paragraph 41, the Hon’ble Supreme Court has given broad principles which should govern disposal of an application for impleadment are as under:

“41.1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

41.3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.



41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restrain order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.

16. Having heard the learned senior counsel for the parties and on considering the material on record, it appears that learned Court below has considered the impleadment application and submissions made on behalf of the parties and passed the detailed and reasoned order exercising his jurisdiction in the facts and circumstances of the case. The learned Court below observed that plaintiff has also sought alternative relief of declaration of title and recovery of possession. The defendants denied relationship of landlord and tenant and asserted their independent title over the suit land. The Court framed issues on 28.05.2013 which includes issue of title as well. The petitioner challenged the deed of partition dated 19.12.1988 as fraudulent and illegal. So, the suit does not seem to be one of tenancy rather complex issue of title is involved here. The intervenor has no right to birth in the suit property is a matter of investigation. Mere addition the intervenor as party will not create an interest in the suit



property. So, the learned Court below found the presence of the intervenor is necessary for efficacious adjudication of this case and the addition is also necessary for avoidance of multiplicity of suits.

17. Considering the facts and circumstances of the case, submissions made on behalf of the parties and the legal provisions stated above, in my considered opinion, there is no illegality or irregularity in the impugned order for interference of this Court in its supervisory jurisdiction under Article 227 of the Constitution. The impugned order is a reasoned order. This Writ Application is devoid of merit and liable to be dismissed.

18. This Writ Application is, accordingly, dismissed. The stay orders granted by this Court in this case is vacated. The trial Court is directed to proceed the case in accordance with law.

(Sunil Dutta Mishra, J)

ashutosh/-

AFR/NAFR	AFR
CAV DATE	02.08.2023.
Uploading Date	08.08.2023.
Transmission Date	

