

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.442 of 2022

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Gautam Kumar, son of Late Mahendra Prasad @ Mahend Prasad, resident of Mohalla- Bangali Tola, ward no. 25, Samastipur, P.S.- Town, Distt.- Samastipur.

... .. Petitioner/s

Versus

1. Rajesh Kumar Sinha, son of Late Kamaleshwari Prasad Sinha, r/o- Mohalla- Mulchand Road, ward no. 21, P.S. Town Distt.- Samastipur.
2. Janardan Prasad Gupta @ Arya, son of Late Mahendra Prasad, Proprietor, General Store, Gandhi Market, Mulchand Road, Ward No. 21, P.S. Town, Distt.- Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kedar Jha, Advocate
For the Respondent/s : Mr. Gyan Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

3 21-02-2023 Heard learned counsel for the parties.

2. The instant application has been filed for setting aside the order dated 26.11.2019 passed by the learned Civil Judge, Munsif II, Samastipur in Eviction Suit No. 5/2017, whereby and whereunder the petition dated 28.05.2019 filed by respondent no.1/plaintiff for addition of respondent no.2 as defendant no2 was allowed.

3. The brief facts of the case are that respondent no.1/plaintiff filed Eviction Suit No. 5/17 before the Court of learned Munsif-IIInd, Samastipur against respondent no.2 for passing eviction order of shop in question and for paying dues rent. Respondent No. 2 appeared and filed his written statement



denying the claim made in eviction suit and stated therein that two shops mentioned in Schedule-1 is actually one shop which has been taken on rent by his younger brother from respondent no.1 and he is doing business in the said suit and paying the rent for the said shop. Respondent No.1 gave only one shop to respondent no.2 on rent which is situated in passage.

4. Respondent No.1/Plaintiff filed a petition for addition of the name of petitioner in the eviction suit which has been allowed by the impugned order.

5. Learned counsel for the petitioner submits that petitioner is running shop separately from his brother and the shop was taken on rent and respondent no.1 without any need has adamant to vacate the shop without any cause of action unreasonably and unnecessarily and learned Court below without considering this fact passed the impugned order allowing the amendment petition for addition the petition for adding the petition as defendant.

6. Learned counsel for the respondents submits that defendant has stated that his brother (petitioner herein) is doing business in disputed shops accordingly it is essential to make him a party for proper and effective disposal of the eviction suit. Further, he has submitted that there is no illegality or mistake in



the impugned order. Further he submits that the coordinate bench of this court has already dismissed the application filed by the defendant / respondent No. 2 against the impugned order dated 26.11.2019 in Civil Miscellaneous jurisdiction case No. 324 of 2020 and the petitioner despite the knowledge of the same, filed their application with malafide to delay the disposal of the case.

7. The crucial test for the addition or otherwise of a particular party as defendant or plaintiff is whether the presence of such party is necessary or at least proper without whom there can be no effective and final adjudication of all issues involved in the suit with regard to the same subject matter. This power may be exercised at any stage of the proceedings either upon or without the application of either party, and that this power must be exercised in the interest of justice and also in respect of all questions relating to subject matter of the suit. A necessary party is one without whom no order can be made effective. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

8. In the present case, the plaintiff himself seeks to implead petitioner as defendant no.2 in his suit for the purpose



of full adjudication of all questions relating to suit property. Ordinarily the plaintiff is dominus litis and may choose to implead only those persons as defendants against whom he wishes to proceed to avoid multiplicity of suit and needless expenses. All persons against whom the right to relief is alleged to exist may be joined as defendants.

9. The coordinate bench of this Court in Civil Miscellaneous Jurisdiction Case No. 324 of 2020 has already observed that the learned court below in the interest of justice and in order to prevent multiplicity of litigation, rightly allowed the amendment petition for addition of the brother of the petitioner as party- defendant No. 2 in the suit.

10. In view of the aforesaid facts and law discussed above, it cannot be said that there is any illegality or material irregularity has committed by the learned Court below in passing the impugned order. I am of the considered view that no interference is required in the impugned order under Article 227 of the constitution and as such, the present application, being devoid of any merit, is hereby dismissed.

(Sunil Dutta Mishra, J)

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