

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1700 of 2018

1. Arun Kumar Sinha, Son of Late Ram Kishor Prasad, Resident of Village- Pipra Jagdish, Police Station- Behea, District-Bhojpur at Ara.
2. Sumitra Sharma @ Sumitra Devi Wife of Jainath Sharma.
3. Avinash Kumar Sharma, Son of Jainath Sharma.
Both Resident of Mohalla- Rajabazar Behea, Police Station- Behea, District- Bhojpur at Ara.

... .. Petitioner/s

Versus

1. Prakash Kumar Gupta, Son of Late Shanker Prasad Gupta
2. Jyoti Kumar Gupta, Son of Late Shanker Prasad Gupta.
3. Malti Devi Wife of Late Rajendra Prasad Gupta.
4. Tantan Kumar Gupta.
5. Ashok Kumar Gupta.
6. Dev Kumar Gupta.
Respondent no. 4 to 6 all Sons of Late Rajendra Prasad Gupta. Respondents no. 1 to 6 all resident of Mohalla- Rajabazar, Behea, P.O. & P.S. Behea, District- Bhojpur at Ara.

----- Appellants/Respondents 1st Set

7. Kanchan Devi, Wife of Vijay Kumar Chaubey, Resident of Mohalla- Rajabazar Behea, P.S. Behea, District Bhojpur, At Present residing at Mohalla- Khasmahal Road, Chiryantand, Jakkanpur, Patna, P.S. Kankerbagh, District- Patna.

... ..Defendant 1st Set Respondent/s 2nd Set

Appearance :

For the Petitioner/s	:	Mr. K. N. Choubey, Sr. Advocate with Mr. Ashok Kumar Garg, Advocate, Mr. Dineshwar Pandey, Advocate and Mr. Ritu Priydarshi, Advocate
For the Respondent/s	:	Mr. Dronacharya, Sr. Advocate with Mr. Aditya Nath Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

6 18-04-2023 Heard Mr. K. N. Choubey, learned senior Advocate

for the petitioners and Mr. Dronacharya, learned senior

Advocate for the respondents.

2. This Miscellaneous Application has been filed



under Article 227 of the Constitution of India against the impugned order dated 17.07.2018 passed in Title Appeal No. 07 of 2004/ Misc. No. 05 of 2004 by the learned Additional District Judge- IVth, Bhojpur at Ara, whereby and whereunder the Court below has rejected the application dated 02.05.2018 filed by the petitioners under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code') for adding them as respondents in the aforesaid Title Appeal No. 07 of 2004/ Misc. No. 05 of 2004.

3. It appears from the material on record that Misc. Case No. 17 of 1984 was filed by Radhika Kuer under Sections 30 and 33 of the Arbitration Act, 1940 for setting aside the award dated 27.05.1983 before the learned Munsif 3rd, Bhojpur, Ara and the same was decreed by the learned Court below vide his judgment and decree dated 07.01.2004 and 12.01.2004 respectively, against which respondents no. 1 to 6 (1st set) filed Title Appeal No. 07 of 2004 before the learned District Judge, Bhojpur, Ara which was dismissed for default on 13.04.2016. On 21.02.2017 Radhika Kuer (respondent no. 1 of Title Appeal No. 07 of 2004) had died leaving behind her legal heirs (adopted daughter Kanchan Devi). Respondents no. 1 to 6 (respondent 1st set) filed a petition for substituting Kanchan Devi as a legal



heirs of Radhika Kuer and expunging the name of respondents no. 2, 3 and 4 from the Title Appeal which was allowed vide order dated 22.03.2017. Vide order dated 04.07.2017, Title Appeal No. 07 of 2014 has been restored to its original file.

4. The petitioners have filed an application dated 02.05.2018 under Order 1 Rule 10 (2) CPC for adding them in place of Radhika Kuer as they are *bona fide* purchasers having right, title and interest in the suit land which was dismissed vide the impugned order dated 17.07.2018.

5. Learned senior counsel for the petitioners submits that petitioners are *bona fide* purchasers of the land in question from Radhika Kuer by registered sale deed dated 22.05.1987 and 10.11.1984 and since then they are in possession over the land in question and are necessary party. On 21.02.2017 after death of Radhika Kuer to protect their right it is necessary that petitioners may be impleaded as party as in their absence no effective order/judgment can be passed. He further submits that substitution of Kanchan Devi prior to restoration of Title Appeal shows that the parties in the appeal are in collusion and they filed collusive compromise which will directly affect the right and title of the petitioners over the land in question.

6. Learned senior counsel for respondents has



conceded that the petitioners are necessary party and he has no objection if the petitioners may be made party in Title Appeal No. 07 of 2004/Misc. No. 05 of 2004 pending before the Additional District Judge 4th, Bhojpur at Ara.

7. 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.

8. In view of the submission of learned counsel for the parties and in the facts and circumstances of the case, the impugned order dated 17.07.2018 is set aside and the application dated 02.05.2018 filed on behalf of the petitioners for making them as a party respondents is allowed.

9. The learned Court concerned is directed to dispose of the Title Appeal No. 7 of 2004 expeditiously and the parties are also directed to co-operate in the Court concerned for early disposal of the appeal.



10. This Miscellaneous Application stands disposed of
in the aforesaid direction.

(Sunil Dutta Mishra, J)

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