

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.843 of 2017

Radhakant Singh @ Radha Kant Sharma son of Late Ramdash Singh, resident of Village- Parsawan, Police Station- Ramgarh Chowk, Halsi, District- Lakhisarai.

... .. Petitioner

Versus

1. Mahesh Singh, Son of Late Bishundeo Singh,
2. Karyanand Singh, Son of Late Chhotan Singh,
3. Balram Kumar, Son of Karyanand Singh,
4. Rajeev Kumar, Son of Bachchu Singh,
5. Ram Charitra Singh, Son of Late Chhotan Singh,
6. Arun Singh,
7. Sahjanand Singh,
8. Lal Bahadur Singh, Resp. 6 to 8 are sons of Ram Charitra Singh,
All are resident of Village and P.O.- Parsawan, Police Station- Ramgarh Chowk Halsi, District- Lakhisarai.
9. The State of Bihar through Collector, Lakhisarai.
10. Circle Officer, Ram Garh Chowk, District- Lakhisarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar No-2, Advocate
For the Respondent/s : Mr. Subhash Chandra Yadav- GP-15

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 25-04-2024

Heard learned counsel for the petitioner and I intend to dispose of the present petition at the stage of admission itself.

02. The present petition has been filed by the petitioner under Article 227 of the Constitution of India for setting aside the order dated 19.01.2017 passed by the learned Sub Judge-II, Lakhisarai in Title Suit No. 109 of 2015 whereby



and whereunder the petition filed by the petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') has been rejected.

03. Learned counsel for the petitioner submits that the respondents- 1st set are the plaintiffs before the learned trial court in Title Suit No. 109 of 2015, which has been filed by the plaintiffs against the State of Bihar asserting their right and title over the suit land appertaining to Plot No. 369 Khata No. 154, Tauzi No. 9357 as mentioned in Schedule-I of the plaint. Further, the suit plot is recorded as '*Gairmazarua Aam*' in the survey record. The plaintiffs claimed that the nature of suit land has changed since long and now it is the '*raiyati*' land of the plaintiffs. Encroachment Case No. 01 of 2015 was filed against the plaintiffs with respect to land in question. The petitioner filed an application under Order 1 Rule 10(2) of the Code for impleading him as a party to the title suit. The basis for impleadment that the intervenor-petitioner is having title over plot no. 365 and the suit land was being used by the petitioner to approach the road being '*Gairmazarua Aam*' land. Moreover, being a member of public, the intervenor-petitioner has got a right to maintain the nature of the suit land, which is in the form of *Dagar*. The general public as well as the petitioner in



particular has been using an appropriating this *Dagar* situated at Plot No. 369 since time immemorial. Therefore, the petitioner has direct interest in the suit property. Furthermore, He is also interested in the protection and preservation of the right of the general public and as such besides his individual right, he is also prosecuting the matter as the representative of the public. Learned counsel further submits that the learned trial court wrongly rejected the petition without considering the aforesaid facts. The moot question involved in the title suit is whether the suit property is public land or not and there is direct interest of the petitioner and for this reason he prayed for his impleadment before the learned trial court. Thus, the learned counsel submits that the learned trial court committed an error by holding that the intervenor-petitioner was not required to be added as party in the present suit.

04. Perused the record.

05. The admitted fact is that the plaintiffs have challenged the survey entry showing the suit property to be '*Gairmazarua Aam*' land. Plaintiffs have their own plea as they have submitted that the nature of land changed way back since 1922 and since then the land has never been treated as a '*Gairmazarua Aam*' land and for all purposes, it has been a



raiyati land for which, the rent receipts were issued.

06. Since the dispute is with regard to nature of suit land and for title, ownership and possession over the said land and the petitioner has failed to establish his interest in the said land except by claiming that the said land was being used as *Dagar* to approach the road from his own land. Apparently, it does not reflect any semblance of interest in the suit property and the petitioner is a stranger to the *lis*.

07. Order 1 Rule 10 (2) of the Code provides 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.”

08. The plaintiffs have not sought any relief against



the petitioner and it is also not in question that the State-respondent has admitted any right or title of the petitioner over the suit property in any manner. Further, the plaintiffs are *dominus litis* and if they deliberately omits to make a person party who is a necessary party to the suit, ultimately, the suit will fail and they will suffer. But being master of suit, the plaintiffs cannot be forced to contest a suit against a person whom they do not consider either a 'necessary party' or a 'proper party'. This discretion is judicial in nature and has to be exercised with reason and fair play and not according to whims. Hence, a busybody or interloper cannot be allowed to be impleaded against the wishes of the plaintiffs.

09. Further, the Hon'ble Supreme Court in the case of ***Sumtibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)***, reported in ***(2007) 10 SCC 82***, has held that a party having not a semblance of interest in the suit property could not be impleaded as intervenor in the suit. In the given facts and circumstances, petitioner is neither a necessary party nor a proper party.

10. In the light of discussions made here-in-above, I do not think the learned trial court has committed any error in passing the impugned order. Hence, the order dated 19.01.2017



passed by the learned Sub Judge-II, Lakhisarai in Title Suit No. 109 of 2015 is hereby affirmed.

11. Accordingly, the present Civil Misc. petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

