

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.191 of 2019

Mukesh Chandra S/o Prabhakar Sinha Resident of Mohalla-Hajipur, Ward No.18, P.O./P.S./Dist.-Khagaria.

... .. Petitioner

Versus

1. Bijoy Singh Gautham S/o Sri Mahendra Narayan Singh Resident of Village-Borney, P.S.-Chautham, Dist.-Khagaria Presently resided at Mohalla-Hajipur, P.O./P.S./Dist.-Khagaria alleged power of attorney holder from Sureshwar Prasad Singh (now dead) son of Late Nemdhari Singh, Resident of 25 Curzon Road, Musewell Hill London,U.K.
2. Babita Devi W/o Wakil Yadav Resident of Rajendra Chowk, Ward No.13, P.O./P.S./Dist.-Khagaria
3. Nisha Kumari W/o Mukesh Kumar,S/o Tarani Yadav Resident of Mohalla-Jaiprakash Nagar,P.O./P.S./Dist.-Khagaria
4. Murari Kumar s/o Tarani Yadav Resident of Mohalla-Jaiprakash Nagar,P.O./P.S./Dist.-Khagaria
5. Meera Devi W/o Dilip Kumar Resident of Mohalla-Jaiprakash Nagar,P.O./P.S./Dist.-Khagaria
6. Kiran Devi W/o Shyam Sundar Yadav Resident of Mohalla-Hajipur, Ward No.12 P.O./P.S./Dist.-Khagaria
7. Prema Devi W/o Ramchandra Yadav Resident of Mohalla-Hajipur, Ward No.12 P.O./P.S./Dist.-Khagaria
8. Sanjay Kumar S/o Bijendra Yadav Resident of Mohalla-Hajipur, Ward No.12 P.O./P.S./Dist.-Khagaria
9. Navin Kumar S/o Bijendra Yadav Resident of Mohalla-Hajipur, Ward No.12 P.O./P.S./Dist.-Khagaria
10. Kumari Bibha W/op Sanjay Kumar Resident of Mohalla-Hajipur, Ward No.12 P.O./P.S./Dist.-Khagaria
11. Sunil Kumar Sah S/o Ram Prasad Sah Resident of Mohalla-N.A.C. Road,Ward No.12,P.O./P.S./Dist.-Khagaria
12. Satyam Minors under the guardianship of Maternal grand father Guneshwar Pd. Yadav Resident of Village Santosh,Chatar,P.S. Allouli,Dist.-Khagaria
13. Shivam Minors under the guardianship of Maternal grand father Guneshwar Pd. Yadav Resident of Village-Santosh,Chatar,P.S. Allouli,Dist.-Khagaria
14. Sundram Minors under the guardianship of Maternal grand father Guneshwar Pd. Yadav Resident of Village-Santosh,Chatar,P.S. Allouli, Dist.-Khagaria.
15. Sarita Devi W/o Pradip Kumar Resident of Post Office Road,P.O./P.S./Dist.-Khagaria.
16. Satyam Gupta S/o Pradip Kumar Resident of Post Office Road, P.O./P.S./Dist.-Khagaria
17. Snehakant Chaudhary W/o Nitin Kumar Chaudhary Resident of Mohalla-Post Office Road,W.N.-19,P.O./P.S./Dist.-Khagaria



18. Punam Devi W/o Sri Narendra Kumar Resident of Mohalla-Post Office Road, W.N.-19, P.O./P.S./Dist.-Khagaria

... .. Respondents

Appearance :

For the Petitioner/s : Md. Waliur Rahman, Advocate
For the Respondent No.2: Mr. Amrendra Nath Verma, Advocate
For the Respondent No.4: Mr. Subodh Kumar Jha, Advocate
Mr. Pranav Kumar Jha, Advocate
Mr. Roshan Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
Date : 30-09-2024

Heard learned counsel for the petitioner and the learned counsel for the respondent no. 2 as well as learned counsel for the respondent no. 4.

02. The present civil miscellaneous petition has been filed under Article 227 of the Constitution of India by the petitioner for quashing the order dated 03.11.2017 passed by the learned Sub Judge-II, Khagaria in Title Suit No. 01 of 2014, whereby and whereunder the petition filed by the respondent no. 2 under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') for her impleadment as plaintiff no. 2 in the suit has been allowed by the learned trial court.

03. Learned counsel for the petitioner submits that the respondent no. 2 is the purchaser of 1100 square feet land from respondent no. 1, who is power of attorney holder of one Sureshwar Prasad Singh, who filed the Title Suit No. 01 of 2014



for declaration that sale deed no. 7474 to 7484 dated 20.11.2013 purported to have been executed by Pratap Singh and Prakash Singh, both sons of Sureshwar Prasad Singh, are fraudulent deeds and are *void, ab initio*, illegal and inoperative and the defendants did not derive any title from these sale deeds. Learned counsel further submits that petitioner is defendant no. 4 in the said suit and he filed his written statement contesting the claim of the plaintiff. In the said suit, respondent no. 2 filed an application on 01.03.2016 stating that she has purchased land of *Khata No. 26, Khesra No. 178*, area 1100 square feet from respondent no. 1 and prayed for adding her as plaintiff in the suit. Learned counsel further submits that the respondent no. 2 has taken the ground that the defendants have been challenging the authority of her vendor in the suit, hence in order to protect her interest, she might be added as party, which was allowed vide impugned order dated 03.11.2017. But the defendants have challenged the right of the power of attorney holder to execute sale deeds in respect of purchased land of themselves to Bimla Devi and Kamal Kishore Prasad Singh and no prayer has been made with respect to intervenor-respondent as she has purchased a different property. With ulterior motive the power of attorney holder has put intervenor-respondent in this case as his principal Sureshwar Prasad Singh was seriously ill and power of attorney would have



come to an end after his death. Learned counsel further submits that the suit has been filed by the power of attorney holder, respondent no. 1, seeking specific relief against the defendants on the basis of being the power of attorney holder of Sureshwar Prasad Singh and the intervenor-respondent could not claim to be added as plaintiff in the suit as she is one of the purchasers from the power of attorney holder of Sureshwar Prasad Singh and except for that she has no other interest in the suit. She is not herself the power of attorney holder. Learned counsel further submits that the intervenor is neither a necessary party nor even a proper party. In this regard, learned counsel referred to the decision of Hon'ble Supreme Court in the case of ***Udit Narain Singh Malpaharia v. Addl. Member Board of Revenue***, reported in ***AIR 1963 SC 786*** wherein it has been held that a 'necessary party' is one without whom no order can be made effectively and 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.

Learned counsel further submits that although it has come in the impugned order that the defendant/petitioner did not make any objection to the prayer made by the respondent no. 2 in the intervention petition, but the same could not justify the passing of the impugned order since it is for the court to decide



whether the intervenor is necessary party or proper party. But there is no finding recorded on the point and only on the ground that the plaintiff has no objection, the present intervention petition of the respondent no. 2 has been allowed. Thus, the learned counsel submits that the impugned order is bad in the eyes of law as the title suit has been filed in representative capacity on the basis of power of attorney and for this reason, a purchaser from the so called power of attorney holder cannot be added as plaintiff, moreover, no relief has been sought against such person.

04. Learned counsel appearing on behalf of respondent no. 4 supports the contention made on behalf of the petitioner.

05. Learned counsel appearing on behalf of respondent no. 2 vehemently opposes the submission made on behalf petitioner. Learned counsel for the respondent no. 2 submits that the intervenor-respondent purchased a property of 1100 square feet from the original plaintiff through his power of attorney vide a registered sale deed no. 1460 dated 30.03.2014 and came into the possession of the said property and mutated the same in her name. Since a cloud hovered over the rights of the intervenor-respondent, and as the original plaintiff was not present before the court to make proper *pairvi* in the case, this respondent has filed intervention application under Order 1 Rule 10(2) of the



Code. Though the learned counsel for the defendant/petitioner has appeared but did not make any objection and hence, the intervention petition was allowed. Learned counsel further submits that the plaintiff is the master of his suit and he did not raise any objection to the impleadment of the respondent no. 2. Moreover, no prejudice would be caused to the defendants, if the respondent no. 2 is impleaded as party. Learned counsel further submits that there is no infirmity in the impugned order and the same needs to be sustained.

06. I have given my thoughtful consideration to the rival submission of the parties and perused the case record. Order 1 Rule 10(2) of the Code reads 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.”

07. Obviously, the court has got ample power to add or strike out the name of any person at any stage of the proceeding. It is entirely at the discretion of the court and the said discretion is to be exercised judiciously by the court for effectually and completely to adjudicate upon and settle all the questions involved in the suit. It does not give any right to any person to be impleaded as party.

08. In the facts of the present case, apparently the suit was instituted by power of attorney holder on behalf of the principal seeking certain reliefs against the defendants, who have allegedly got some sale deeds executed in their favour by the sons of principal whereas the intervenor-respondent claims herself to be purchaser of a piece of land from the power of attorney holder. In these circumstances, the claim of the respondent no. 2 to intervene in the matter is to be considered. But the intervenor cannot claim herself to be a ‘necessary party’ or even a ‘proper party’ for the reason that neither the defendants have raised any claim against her nor any relief has been sought against the intervenor-respondent nor she can claim herself to be a representative of the power of attorney holder or even the principal. The respondent no. 2 has no *locus standi* to step into



the shoes of the plaintiff. She cannot become plaintiff. She will remain a mere purchaser from the power of attorney holder and if she has any grievance either against her vendor or the defendants of this case, she can agitate her rights in an independent suit and not in a suit filed by plaintiff against the defendants. Further she did not claim her impleadment as a defendant for the obvious reason that she has no conflict with the plaintiff. If she has any *inter se* dispute with defendants, such dispute could not be allowed to be raised in a proceeding instituted by the plaintiff against the defendants. Moreover, the impugned order shows that the intervenor-respondent no. 2 has been allowed to be impleaded as plaintiff only on the ground that no objection was raised by the petitioner or the plaintiff. But there is no finding of the learned trial court that the presence of intervenor-respondent no.2 before it is necessary to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit.

09. The Hon'ble Supreme Court in the case of *Kasturi v. Iyyamperumal*, reported in (2005) 6 SCC 733, held that 'necessary parties' are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings. On the other hand 'proper parties' are those



whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

10. The Hon'ble Supreme Court in the case of ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.***, reported in ***(2010) 7 SCC 417*** has held that discretion of a court to add a person as party is limited to person found to be necessary party or 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 as a party.

11. 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.

12. In the light of discussion made here-in-before, the irresistible conclusion is that the intervenor-respondent no. 2 is neither a necessary nor proper party. Hence, her impleadment could not be allowed.

13. In the aforesaid facts and circumstances, I am of



the considered opinion that the learned trial court committed an error of jurisdiction while passing the impugned order and hence the impugned order dated 03.11.2017 passed by the learned Sub Judge-II, Khagaria in Title Suit No. 01 of 2014 could not be sustained and the same is set aside. In the result, the petition dated 01.03.2016 filed by the respondent no. 2 is rejected.

14. Accordingly, the present Civil Misc. Petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03-10-2024
Transmission Date	NA

