

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1205 of 2017**

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Mohar Rai, Son of Shiv Narayan Rai, Resident of Mohalla - Mahuli, P.S. -
Didarganj, District - Patna.

... .. Petitioner/s

Versus

Shivnath Prasad, Son of Jamuna Prasad Singh, Resident of Village - Mahuli,
P.S. - Didarganj, District - Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Raj Dular Sah, Advocate
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 13-02-2024

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

2. The instant petition has been filed by the
petitioner/intervenor for setting aside the order dated 23.08.2016
passed in Title Suit No.391 of 2011 by the learned Sub Judge-
III, Patna City whereby and whereunder the intervention
application filed under Order 1 Rule 10 (2) of the Code of Civil
Procedure has been rejected.

3. The learned counsel for the petitioner submits that
the respondent filed a Title Suit No.391/2011 against the father
of the petitioner, namely, Shiv Narayan Singh for a decree of
specific performance of contract on the basis of an agreement



for sale dated 26.05.2004. The plaintiff/respondent further prayed that the defendant be directed to execute sale deed after receiving balance consideration amount. The petitioner has also filed a Title Partition Suit No.294/2016 which is pending in the court of learned Sub Judge-IV, Patna City and the defendant Shiv Naryan of Title Suit No.391 of 2011 is also a defendant in the said partition suit. The petitioner filed a petition under Order 1 Rule 10 (2) of the Code in Title Suit No.391/2011 seeking impleadment on the ground that when the father of the petitioner entered into an agreement of sale, this petitioner was major. But showing him to be a minor, the father of the petitioner entered into the agreement. The property in question is the ancestral property and the father of the petitioner got the same on devolution after death of his mother along with his other brothers. The petitioner is a co-sharer in the joint family property. A rejoinder was filed on behalf of the respondents opposing the impleadment on various grounds. The learned trial court after hearing the parties rejected the petition filed by the petitioner to implead him as intervenor.

4. The learned counsel further submits that the learned trial court failed to appreciate that the impugned order is against the spirit of Order 1 Rule 10 (2) of the code. The father



of the petitioner has no right, title and interest over the suit property as this petitioner is the co-sharer and the agreement for sale is not binding upon this petitioner. The suit property was not the transferred property of the defendant-father of the petitioner and the agreement for sale was executed mentioning wrong fact about the minority of the petitioner. The learned trial court failed to take into consideration all these facts and passed an erroneous order and the same may be set aside.

5. Perused the record.

6. Having regard to the aforementioned facts and circumstances as well as submissions made on behalf of the petitioner, it is evident that the petitioner has already filed a title partition suit to assert his right and it is also an admitted fact that the father of the petitioner is co-sharer. Being a co-sharer, the father of the petitioner was well within his right to enter into the agreement for sale with regard to suit property. Since it is a case of specific performance of contract and except for the parties to such agreement, a third party/stranger cannot be allowed to meddle in a suit for specific performance seeking impleadment without the express will of the plaintiff who is *dominus litis*. The petitioner is neither a necessary party nor a proper party. The law on this point has been made clear by the



Hon'ble Supreme Court in the case of ***Kasturi Vs. Iyyamperumal and Ors.***, reported in ***(2005) 6 SCC 733***. It would be relevant to quote paragraphs 16 to 18 of the said judgment :

“16. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 CPC “all the questions involved in the suit” it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff-appellant on one hand and Respondents 2 and 3 and Respondents 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of Respondents 1 and 4 to 11 in respect of the



contracted property and in view of the detailed discussion made hereinafter, Respondents 1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.

*17. It is difficult to conceive that while deciding the question as to who is in possession of the contracted property, it would be open to the court to decide the question of possession of a third party or a stranger as first the lis to be decided is the enforceability of the contract entered into between the appellant and Respondent 3 and whether contract was executed by the appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. Secondly in that case, whoever asserts his independent possession of the contracted property has to be added in the suit, then this process may continue without a final decision of the suit. Apart from that, the intervener must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the contract for sale. In *Amon v. Raphael Tuck and Sons Ltd.* [(1956) 1 All ER 273 : (1956) 1 QB 357 : (1956) 2 WLR 372] it has been held that a person is legally interested in the answers to the controversies only if he can satisfy the court that it may lead to a result that will affect him legally.*



18. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litis and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are, therefore, of the view that Respondents 1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale”.

7. In view of the aforesaid discussion as well as ratio laid down by the Hon’ble Supreme Court in the case of **Kasturi (supra)**, I do not find the impugned order suffers from any infirmity as the same has been passed after consideration of all the aspects of the matter and, therefore, the same is affirmed.

8. Hence, I do not find any merit in the instant petition and, accordingly, the same is dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
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