

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1215 of 2017**

=====

Pankaj Kumar Thakur Son of Muchkund Thakur Resident of Village Rangra,
P.S. Rangra Chowk, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Deputy Collector Land Reforms, Naugachia, District Bhagalpur.
3. Circle Officer, Rangra Sub Division Naugachia District Bhagalpur.
4. Mukhiya Gram Panchayat Rangra, Sub Division Naugachia District Bhagalpur.
5. Sarpanch, Gram Panchayat Rangra, Sub Division Naugachia District Bhagalpur.
6. Sheikh Murshid
7. Sheikh Rahman Both Sons of Late Fidda Hussain Resident of Village, Rangra P.S. Rangra Chowk Gopalpur, District - Bhagalpur.
8. Ranjit Kumar Thakur Son of Muchkund Thakur
9. Renu Devi Daughter of Muchkund Thakur Both residents of Village - Rangra, P.S. Rangra Chowk, District - Bhagalpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Singh, Advocate
For the Respondent/s	:	Mr. Rishi Raj Sinha-Sc19

=====

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

Date : 29-04-2024

Heard learned counsel appearing on behalf of the petitioner as well as learned counsel appearing on behalf of the State/respondent and I intend to dispose of the Civil Misc. petition at the stage of admission itself.

02. The instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 19.04.2017, passed by the learned Sub-Judge 1st, Naugachia in

Title Suit No. 95 of 2014, by which the petition filed on behalf of the plaintiff under Order 1 Rule 10 and under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘the Code’) was rejected.

03. Learned counsel appearing for the petitioner submits that the petitioner filed Title Suit No. 95 of 2014 against respondents second party seeking following relief(s):-

“A. That the court be pleased to pass to hold and declare the suit property bearing plot 3778 and part and partial of new plot no. 4125, 4126 of Khata No. 983.

B. That a preliminary decree be prepared in respect of the land in favour of the plaintiffs and also to restore them to go upon the land.

C. For the cost of the suit be awarded to the plaintiffs.

D. For that other relief and relieves be part in favour of the plaintiffs”

04. During pendency of the title suit in a subsequent event, when the plaintiffs obtained certified copy of the Revisional Survey Kahtiyan, the plaintiffs came to know that the suit property was entered into the name of Anabad Sarvasadharan. Thereafter, notice dated 22nd December, 2015 under Section 80(2) of the Code was sent to the State representative as the petitioner/plaintiffs intended to implead them as parties in their Title Suit. Further, during pendency of

the suit, petition dated 25th January, 2017 was filed by the plaintiffs under Order VI Rule 17 read with Section 151 of the Code, which was allowed by the learned trial court vide Order dated 09th of February, 2017. On the same day, i.e., on 09th of February, 2017, plaintiffs filed petition under Order 1 Rule 10 read with Section 151 of the Code for making the State of Bihar as a party in the Suit which was rejected by the impugned order dated 19th of April, 2017.

05. Learned counsel for the petitioner further submits that the impugned order was passed on technical ground and substantial justice could not be denied merely on technical ground. Learned counsel further submits that learned trial court did not consider the fact that the plaintiffs procured the certified copy of the Revisional Survey *Khatiyān* subsequent to the filing of Suit and as soon as the plaintiffs came to know about the entry in the Revisional Survey *Khatiyān*, they applied for making State a party in the suit. Learned counsel further submits that learned trial court also overlooked the fact that for deciding the real controversy of the parties, the presence of State was necessary as the State was a necessary party. If the State is not allowed to be impleaded as party, serious prejudice would be caused to the plaintiffs. Moreover, suit is at initial stage and no

prejudice would be caused to the other side, if the State is impleaded as party. Learned counsel further submits that since the plaintiffs came to know about the entry of Revisional Survey Khatiyani subsequent to the filing of the Suit, they took steps for service of notice under Section 80(2) of the Code to the State Government. So it was not correct on part of the learned Trial Judge to give a finding that the notice under Section 80(2) of the Code was not sent within time. On the sole ground that the notice was sent after filing of the suit, the petition for impleadment was rejected which is illegal and improper.

06. Learned counsel appearing on behalf of the State vehemently opposes the submissions made on behalf of the petitioner. Learned counsel for the State submits that the learned Trial Court, after going through the record and considering the fact that no notice under Section 80(2) of the Code was served upon the State Government, prior to filing of the Suit, has passed the order which does not require any interference of this Court in present Civil Misc. petition. The order of the learned trial court is legal and in accordance with the provisions of the law and the same does not suffer from any infirmity.

07. I have given my thoughtful consideration to the rival submission of the parties Order I Rule10(2) of the Code

reads as under:

“(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 provisions makes it clear that it is the discretion of the Court that a person could be added as a party if his presence is necessary for arriving at a just decision in the matter. The present case where the suit property which was being contested between the original plaintiffs and defendants stand entered into the name of the State Government as Anabad Sarvasadharan. Without impleading the State Government as party, matter could not proceed any further. The State Government is a necessary party in such condition. In the given facts and circumstances, I am of the opinion that presence of State is necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved

in the suit. The reason taken by the learned trial court for rejecting the petition for impleadment is based on service of notice under Section 80(2) of the Code to the State Government after filing of the Suit. It is the whole case of the plaintiffs/petitioner that they came to know about the survey *khatian* entry after filing of the suit. In these circumstances, it was not expected that they would be serving prior notice under Section 80(2) of the Code to the State Government. Moreover purpose of serving notice under Section 80(2) of the Code is to make aware the State about the suit being filed against State/respondents a dispute being raised by the plaintiff and to take remedial/ corrective measures. Moreover, so far as service of the notice after the State has been made as one of the parties in the present case is concerned, as per contention of by the learned counsel for the petitioner the notice has been given to the State on 06th of January, 2016.

09. In the aforesaid facts and circumstances, I do not think any prejudice would be caused ever to the other respondents who have not been issued notice and hence notice to the other respondents is dispensed with. Since the State appears to be a necessary party in the present case and the law on this point is much clear that presence of a person might be

necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, such person must be added as a party by the Court.

10. Hence, in the light of aforesaid discussion, I do not think the impugned order could be sustained and hence the order dated 19th of April, 2017 is set aside and application dated 09th of February, 2017 filed by the petitioner stands allowed.

11. Accordingly, the present Civil Misc. petition is allowed.

12. However, the learned trial court would proceed in the matter uninfluenced by any observation made by this Court.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.05.2024
Transmission Date	N/A