

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1933 of 2017

Sunderpati Devi, Wife of Baldeo Singh and Daughter of Late Rameshwar Pandey, Resident of Village- Khapsi, P.S. Baniyapur, District- Saran.

... .. Petitioner

Versus

1. Most. Kishora Devi (deleted vide order dated 18.09.2023), Wife of Late Rameshwar Pandey. Resident of Village-Marahiya, P.O. Mira Musehari, P.S. Chapra Mufassil, District-Saran.
2. Lallan Pandey, Son of Late Rameshwar Pandey. Both Resident of Village-Marahiya, P.O. Mira Musehari, P.S. Chapra Mufassil, District- Saran.
3. Madan Mohan Pandey, Son of Late Ramji Pandey.
4. Vijay Kumar Pandey
5. Deo Kumar Pandey Both Sons of Late Govind Pandey.
6. Brajesh Kumar Pandey, Son of Madan Mohan Pandey. Respondent Nos. 3 to 6 Residents of Village- Marahiya, P.O. Mira Musehari, P.S. Chapra Mufassil, District Saran.
7. Binod Kumar Singh, s/o Late Ragho Thakur, Resident of Village-Chetan Chapra, P.S.-Baniyapur, District-Saran.
8. Vishnu Kumar, S/o Late Ragho Thakur, Resident of Village-Chetan Chapra, P.S.-Baniyapur, District-Saran.
9. Seema Devi, Daughter of Late Ragho Thakur, Resident of Village-Chetan Chapra, P.S.-Baniyapur, District-Saran.
10. Shila Devi, Daughter of Late Ragho Thakur, Resident of Village-Chetan Chapra, P.S.-Baniyapur, District-Saran.
11. Rita Kumar, Daughter of Late Ragho Thakur, Resident of Village-Chetan Chapra, P.S.-Baniyapur, District-Saran.
12. Neha Kumari, Daughter of Late Ragho Thakur, Resident of Village-Chetan Chapra, P.S.-Baniyapur, District-Saran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Nagendra Rai, Advocate Mr. Navin Nikunj, Advocate
For the Respondent/s	:	Ms. Prakritita Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 12-02-2024

Heard learned counsels for the respective parties.

Re:- I.A. No. 03 of 2023:-

02. The instant interlocutory application has been filed



on behalf of the petitioner to bring on record the order dated 06.09.2017 passed by the learned Sub. Judge-V, Saran at Chapra in Title Suit No. 460 of 2013, which has been filed to review the order dated 20.03.2017. Further, the prayer has been made in the interlocutory application to set aside the order dated 06.09.2017 and to allow the review petition dated 22.07.2017 filed by the petitioner.

03. Learned counsel for the petitioner submits that due to mistake and lack of knowledge of legal technicalities, the order on review petition was not brought to his knowledge earlier while filing the civil misc. petition. Learned counsel for the petitioner further submits that for this reason the review order was not challenged and the same was not filed on record. The learned counsel prays for taking the order dated 06.09.2017 on record.

04. The contention of the learned counsel for the petitioner has been vehemently opposed by the learned counsel for the respondents, submitting that the interlocutory application has been filed after much delay since the original petition was filed in the year 2017 and on 04.12.2023 the present interlocutory application has been filed when it was pointed out on behalf of the respondents that the petition of the petitioner was not maintainable.



05. Having regard to the rival submissions of the parties and in order to address the substantial issue, I.A. No. 03 of 2023 is allowed and the order dated 06.09.2017 passed by the learned Sub. Judge-V, Saran at Chapra in Title Suit No. 460 of 2013 is taken on record.

Re:-Civil Miscellaneous No.1933 Of 2017:

06. The present petition has been filed on behalf petitioner under Article 227 of the Constitution of India for setting aside the order dated 20.03.2017 passed by the learned Sub. Judge-V, Saran at Chpara in Title Suit No. 460 of 2013 and to allow the intervention application dated 12.09.2016 filed under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'). Further, by way of interlocutory application, the petitioner has also added further relief(s) for setting aside the review order dated 06.09.2017 passed by the learned Sub. Judge-V, Saran at Chapra subsequently, in Title Suit No. 460 of 2013 and also to allow the review petition dated 22.07.2017 filed by the petitioner.

07. The facts which emerge from the records are that plaintiffs/respondents 1st set have filed Title Suit No. 460 of 2013 against the defendants/respondent-2nd set before the learned trial court seeking relief of partition claiming half share in Schedule-1, 2 and 3 of the property. Schedule-1 properties are the ancestral



khatiyani property which stood recorded in the name of one Tapeswar Pandey in R.S. Khatiyani. Tapeswar Pandey was the common ancestor of Ram Prasad Pandey, Ramji Pandey and Lal Babu Pandey. Schedule-2 of the land is joint family property recorded in the name of Lal Babu Pandey and Schedule-3 property is the jointly family house constructed in 1996-97. First of all, Ramji Pandey died leaving behind his two sons, Govinda Pandey and Madan Mohan Pandey and his sons came in joint possession over Schedule-1 property along with Lal Babu Pandey and Ram Prasad Pandey. Ram Prasad Pandey died leaving behind his son, namely, Rameshwar Pandey. Lal Babu Pandey died unmarried in 1987 and he was joint with the descendants of Ramji Prasad and Ram Prasad Pandey and his interest devolved upon the remaining two branches. Govinda Pandey has four sons out of which, two sons, namely, Kunj Bihari and Jai Prakash have been trace-less since childhood and they would be presumed dead. Rameshwar Pandey died leaving behind his widow, Kishora Devi @ Kishori Devi and son, Lallan Pandey, who filed the suit before the learned court below. The respondent first set (respondent no.2) and respondent-2nd set (respondent nos. 3 to 12) are living separately but there has been no partition by metes and bounds. Due to difficulty in



cultivation, the respondent-1st set filed a case under the Bihar Land Disputes Resolution Act, 2009 for partition and the said case was dropped as the same involved question of title and possession. Hence, the title suit has been filed before the learned trial court by the respondent-1st set. The respondent-2nd set (respondent no.3) appeared to contest the suit and filed his written statement and he took plea of previous partition amongst the heirs of Tapeswar Pandey in 1945. It was also pleaded that Lal Babu Pandey reunited with Ramji Pandey and constituted a fresh coparcenery, therefore, they have rights of 2/3 share in the suit property. Respondent-2nd set also pleaded in Para-11 of his written statement that Rameshwar Pandey has two more daughters, namely Sundarpati Devi and Ratnawali Devi who were necessary parties and the suit is liable to be dismissed in their absence. Meanwhile, in the aforesaid title suit, the petitioner filed intervention petition under Order-1 Rule 10(2) of the Code dated 12.09.2016 claiming to be the legal heir, i.e., daughter of Rameshwar Pandey, which was rejected by the learned trial court by the impugned order.

08. Learned counsel for the petitioner submits that when the petitioner learnt about the proceeding before the learned trial court, she filed intervention petition on 12.09.2016



under Order-1 Rule 10(2) of the Code claiming to be necessary party having direct interest in suit property as she is the daughter of Rameshwar Pandey. Learned counsel further submits that the plaintiff/respondent-1st set opposed the intervention petition filed on behalf petitioner by filing rejoinder affidavit on 24.10.2016 pleading that the petitioner is the daughter of Ramji Pandey. Learned counsel further submits that during course of hearing on intervention petition, the petitioner produced his original ration card showing her parentage and also filed a copy of the same. Learned counsel further submits that after hearing the parties on the intervention petition, the learned trial court without appreciating the relevant facts and material, rejected the intervention petition of the petitioner. Learned counsel further submits that ration card and certificates issued by the concerned Gram Panchayats, *prima facie*, establish the claim of the petitioner. Therefore, the impugned order is perverse, erroneous and bad in the eye of law. The learned trial court has failed to consider the fact there was *prima facie* material in support of the petitioner's claim and detailed evidence could be adduced and the court could consider the same after allowing the intervention petition. The learned court below has failed to exercise its jurisdiction under the provisions



of Order-1 Rule 10 of the Code which is for doing substantial justice and to avoid the multiplicity of the suit. Thus, the learned counsel for the petitioner prays to allow the present petition granting all the reliefs claimed therein.

09. On the other hand, learned counsel for the respondents vehemently opposes the contention made on behalf of the petitioner. Learned counsel for the respondents submits that learned trial court after appreciating all the material available before it rightly rejected the intervention application filed on behalf of the petitioner under Order 1 Rule 10(2) of the Code as the petitioner failed to produce any document/proof showing that she is the legal heir of Rameshwar Pandey. Learned counsel further submits that the petitioner has not come before this Court with clean hands and the material facts have been suppressed by the petitioner, therefore, the present petition is liable to be dismissed on this ground alone. Learned counsel further submits that respondent-1st set have filed title suit against the respondents-2nd set for declaration of their half share in the ancestral property described in the plaint and respondent no.2 and his father were fighting for their share in the ancestral property since long, but at no point of time, the petitioner ever came asking for her share in the property of



respondents nor claimed to be daughter of Rameshwar Pandey during his life time. Earlier the respondent no. 2 and his father also filed a case before the DCLR, Sadar, Chapra bearing Case No. 53/2012-13 on 25.07.2012 claiming their half share in the ancestral property based on oral partition taking place much earlier and even at that point of time, no one came forward claiming to be daughter of Rameshwar Pandey and showed interest in the said property. However, the said case was dismissed and the parties were directed to approach the Civil Court. Learned counsel further submits that after death of Rameshwar Pandey in the year 2013, his widow and his son, Lalan Pandey filed the title suit for partition claiming their share in the ancestral property and when the evidences in partition suit was about to close, for the first time, the petitioner filed the intervention application dated 12.09.2016 for impleading her as party respondent claiming to be daughter of Rameshwar Pandey without producing any document in support of her claim. Therefore, the said intervention application was dismissed by a reasoned and speaking order by the learned trial court. Thereafter, the petitioned filed an application under Order 47 Rule 1 of the Code for reviewing the order dated 20.03.2017 claiming that in spite of filing of copy of Ration Card of



Sunderpati Devi wherein her father's name is mentioned as Rameshwar Pandey, the learned trial court overlooked the said document and passed the impugned order. The learned trial court, after perusing the entire record, found that no such document was filed by the petitioner and finding the limited scope of review, dismissed the review petition of the petitioner vide order 06.09.2017. Learned counsel further submits that so far claim of the petitioner to be the daughter of Rameshwar Pandey on the basis of Ration Card is concerned, the Ration Card is one of the documents which shows the details of family members of the Ration Card holder, but same cannot be the sole ground of accepting the contention of the person claiming to be legal heirs of a deceased person in absence of any other corroborative material. Learned counsel further submits that the said Ration Card appears to be issued in 2014, i.e., after the death of Rameshwar Pandey. The petitioner is residing in Baniyapur Block which is *Sasural* of the petitioner on which address, the Ration Card is issued and therefore, the issuing authority might not have knowledge about the actual name of father of petitioner, who was resident of Village-Marahiya, P.S.- Chapra Mufassil. Normally, the Ration Cards are issued in the name of *karta* of the family and the married woman used to



mention her husband's name in the official documents and not her father's name. The aforesaid Ration Card appears to be forged as the same carries the name of father of petitioner as Rameshwar Pandey who was not alive in the year 2014 and moreover, the date of issuance of Ration Card is left blank. Learned counsel for the respondents further submits that the petitioner is trying to create some more documents in her favour, which would be evident from the Voter List prepared in the year 2023 wherein the name of petitioner could be found at two different Constituencies, one at Garkha where the petitioner showed herself as daughter of Ram Ishwar Pandey and another at Baniyapur where the petitioner showed herself as wife of Baldeo Singh. Learned counsel further submits that it is pertinent to mention here that in Voter List prepared for Garkha Vidhan Sabha of the year 2014, the name of petitioner was not found anywhere and, therefore, it can be said that in order to establish her false claim, the petitioner is trying to procure certain documents which were never in existence during the lifetime of Rameshwar Pandey. Learned counsel further submits that if the petitioner wants to get herself declared the daughter of Rameshwar Pandey, in such situation, she is required to get the declaration from the court of competent jurisdiction.



Learned counsel further submits that no a single villager during the partition suit has taken the name of petitioner as daughter of Rameshwar Pandey. Learned counsel further submits that on finding the claim to be false one, the legal heirs of, Ragho Thakur @ Raghaw Thakur, who also sought impleadment before the learned court below along with this petitioner, do not ready to join the petitioner and therefore, name of Ragho Thakur @ Raghaw Thakur was expunged and his legal heirs/representatives have been made party as respondent nos. 7 to 12. Thus, the learned counsel submits that the learned trial court rightly rejected the petition(s) filed on behalf of the petitioner by reasoned order, therefore, the instant petition deserves to be dismissed.

10. I have given my thoughtful consideration to the rival submissions of the parties. Apparently, the respondent no.2 and widow of Rameshwar Pandey, namely, Kishori Devi (deceased) preferred title suit against the respondent-2nd set in the year 2013 for partition, claiming their half share in the scheduled property described in the plaint. The petitioner, for the first time, after lapse of three years of filing of aforesaid title partition suit, on 12.09.2016, preferred a petition before the learned trial court claiming to be the daughter of Rameshwar



Pandey, who is the father of respondent- no.2, and prayed for her impleadment in the said suit as a necessary party. Initially, there were two original petitioners, namely Sunderpati Devi and her brother-in-law, Ragho Thakur @ Raghaw Thakur (husband of Ratnawali Devi) in the present case who sought impleadment before the learned court below. However, due to death of original petitioner, Ragho Thakur, his name was expunged and his legal heirs/representatives were not willing to join as petitioners in this case, they have been made respondent nos. 7 to 12 in the present petition.

11. The claim of the petitioner cannot be sustained for a number of reasons. To begin with, her claim that she is daughter of Rameshwar Pandey appears to be shrouded in doubts. She tried to intervene in a matter which was filed by her so called mother and brother without mentioning about existence of either the petitioner or her deceased sister. It is unequivocal finding of the learned trial court that no material were placed on record so as to consider the claim of the petitioner. It is also the finding of the learned trial court that the petitioner has not filed anything on record as a proof to show that she is the daughter of Rameshwar Pandey. The petitioner did file a review petition for correction in the order dated



28.03.2017 on the ground that though certain documents were filed on record but the same were not considered by the learned trial court. On the contrary, the learned trial court emphatically held that no documents were produced when the order dated 28.03.2017 was passed as it scrutinized the case record microscopically. So, the claim of the petitioner on this count does not appear to be credible. In any case, some copies of documents have been filed on record along with the present petition and these documents are copies of certificate issued by *Sarpanch* of *Gram Kachahari- Badlu Tola*, *Sarpanch* of *Gram Panchayat-Raj Suraudha* and photocopies of extract of Ration Card issued in the name of petitioner-Sunderpati Devi. Evidently, these documents, the certificates of *Sarpanch* are from the year 2017 and the copy of ration card does not bear any date. Now, both the certificates do not mention the basis on which such certificates were issued. The persons issuing the certificates have not mentioned that they were having personal knowledge about the family of father of the respondent no. 2 or about the number of children he was having. Similarly, the extracts of ration card appears to be a dubious document on face of it. In this part, if the husband is alive, the married woman is identified by the name of her husband and not by the name of



her father. Moreover, the age of the petitioner has been mentioned as 68 years and the age of her husband is 78 years and in such document mentioning the name of father for identification appears to be strange. It is also pertinent to note that all the documents appear to have been prepared after death of Rameshwar Pandey.

12. The counter affidavit filed on behalf of the contesting respondent has also brought to fore some interesting facts about other documents. In the year 2014, the name of petitioner does not figure in the Voter List of *Garkha* constituency as daughter of Rameshwar Pandey. However, in the Voter Lists of 2023, suddenly, the name of the petitioner came up in two different constituencies, one at *Garkha* constituency showing herself to be the daughter of Ram Ishwar Pandey and another at Baniyapur constituency where the petitioner has shown herself as wife of Baldeo Singh. So, the claim of the petitioner is without corroborative material and the learned trial court appears to have correctly taken into account the lack of material supporting the claim of the petitioner.

13. It also appears that by getting herself impleaded in the partition suit, the petitioner wants a declaration of her status in an indirect manner, which cannot be allowed. The petitioner



could not get herself impleaded in the partition suit of the plaintiff and expects the learned trial court to make a declaration that she is the daughter of Rameshwar Pandey, when there is no material on record to corroborate her claim. For this, the petitioner would need to get a declaration from a competent court in a separate proceeding. The scope of a suit for partition cannot be enlarged to include declaration of status for a third party.

14. Further, the plaintiff is *dominus litis* and if he deliberately omits to make a person party who is a necessary party to the suit, ultimately, the suit will fail and he will suffer. But being master of suit, the plaintiff cannot be forced to contest a suit against a person whom he does not consider either a necessary party or a proper party. Even 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 against the wishes of the plaintiff.



15. In the light of discussions made here-in-above, I am of the considered opinion that the learned trial court rightly rejected the claim of the petitioner. Hence, the orders dated 20.03.2017 and 06.09.2017, respectively, passed by the learned Sub. Judge-V, Saran at Chapra in Title Suit No. 460 2013 are hereby affirmed. In the result, the petitioner’s application(s) dated 12.09.2016 and 22.07.2017 are rejected.

16. However, the petitioner is at liberty to take recourse of law in order to establish her claim about being daughter of Rameshwar Pandey and for declaration of her right, title and interest in separate suit.

17. Accordingly, the present Civil Misc. Case stands dismissed.

18. This Court has not expressed anything on the merits of the case in any manner and whatever has been observed, is only for the purpose of disposal of the present petition and the learned trial court will not be prejudiced by any of the observations made by this Court.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.02.2024
Transmission Date	NA

