

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.726 of 2018

Smt. Baby Devi W/o Sri Himanshu Kumar, R/o Sri Rampur, Akbarnagar, P.S. Akbarnagar, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Bhagalpur.
2. Deputy Collector Land Reforms (DCLR), Bhagalpur.
3. Circle Officer, Shahkund, District- Bhagalpur.
4. Pradeep Kumar Mandal, son of Late Chandeshwar Mandal, R/o Village Milki, P.S. Shahkund, District- Bhagalpur.
5. Pramod Kumar Mandal son of Late Chandeshwar Mandal, R/o Village Milki, P.S. Shahkund, District- Bhagalpur.
6. Sunil Mandal son of Late Chandeshwar Mandal, R/o Village Milki, P.S. Shahkund, District Bhagalpur.
- 7.1. Amitabh Mani Singh son of Late Rajbansh Mani Singh at present residing at Mohalla- Vikramshila Colony, Urdu Bazar, Near Jungli Kali Sthan, P.S.- Tatarpur, District- Bhagalpur.
- 7.2. Ashish Mani Singh son of Late Rajbansh Mani Singh at present residing at Mohalla- Vikramshila Colony, Urdu Bazar, Near Jungli Kali Sthan, P.S.- Tatarpur, District- Bhagalpur.
8. Ramashish Singh, S/o Late Prabhunath Singh, resident of Village Pachrukhi, P.S. Shahkund, District- Bhagalpur.
- 9.1. Sharwan Renuka son of Late Ram Swaroop Ram Marwari, Resident of C/o Shankar Motors, besides Canera Bank, near Ajanta Talkies, P.S.- Kotwali, P.O.- G.P.O., District- Bhagalpur.
- 9.2. Sajjan Renuka son of Late Ram Swaroop Marwari, Resident of C/o Shankar Motors, besides Canera Bank, near Ajanta Talkies, P.S.- Kotwali, P.O.- G.P.O., District- Bhagalpur.
- 9.3. Shambhu Renuka son of Late Ram Swaroop Marwari, Resident of C/o Shankar Motors, besides Canera Bank, near Ajanta Talkies, P.S.- Kotwali, P.O.- G.P.O., District- Bhagalpur.
10. Raj Kumar Das, S/o Late Gittu Das, At Pachrukhi (Harijan Tola), P.O. Pachrukhi, P.S. Shahkund, District- Bhagalpur
11. Kamal Kishore Mandal S/o Late Bhajo Mandal, At Pairbominiyamal, P.O. Pachrukhi Bazar, P.S. Shahkund, District- Bhagalpur.
12. Satya Ram Mandal, S/o Sri Hari Mandal At Pairbominiyamal, P.O. Pachrukhi, P.S. Shahkund, District- Bhagalpur.
13. Dhanajay Mandal, son of Late Sheo Nandan Mandal, Resident of Village- Milky, P.S.- Shahkund, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner : Mr. Deepak Kumar Sinha, Advocate



For the State : Mr. Ram Pravesh Nath Tiwari, AC to SC-25
For the private Res. : Dr. Manoj Kumar, Advocate
Mr. Kshem Sharma, Advocate
Mr. Preeti Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 18-03-2024

The present Misc. Petition has been filed under Article 227 of the Constitution of India by the petitioner for setting aside the order dated 26.03.2018 passed by the learned Munsif-II, Sadar, Bhagalpur in Title Suit No. 109 of 1993 whereby and whereunder the learned Munsiff-II, Bhagalpur rejected the petition of intervenor-petitioner (present petitioner) filed under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') for impleadment of the petitioner as defendant in the aforesaid title suit.

02. Briefly stated the case of the petitioner is that Title Suit No. 109 of 1993 was filed by the private respondents who are Trustees of one Pachrukhi Goshala at District-Bhagalpur against the defendants, the State of Bihar and other authorities as well as private parties, seeking following relief(s):-

(i). For declaration that Pachrukhi Goshala is the rightful owner and is in possession of the suit land through its trustees and survey entry in the name of



defendants is illegal.

(ii). For declaration of revisional survey entry to be wrong, inoperative and void.

(iii). Permanent injunction against defendants-1st party from distributing the suit land treating as Government land through purcha.

(iv). The cost of the suit and other relief(s) which the court may think fit and proper be awarded to the plaintiff.

03. The defendant-2nd party, Chandeshwar Mandal, appeared and filed his written statement claiming that the land in question was not related the State of Bihar and he further claimed his right, title and possession over the suit land.

04. On coming to know about the pending Title Suit No. 109 of 1993, the petitioner, who claimed her right, title and possession over one acre and 60 ½ decimal of land of *khesra* no. 80, *khata* no. 307 out of total area of 03-acre 76 decimal, filed intervention petition under Order 1 Rule 10 r/w Section 151 of the Code on 08.11.2017 to make her a party as intervenor defendant in the said suit. After hearing both the parties, the petition of the petitioner was rejected on 26.03.2018 by the learned Munsif-II, Sadar, Bhagalpur and the said order has been



challenged in the present petition.

05. Learned counsel for the petitioner submitted that the petitioner has purchased the part of land of *khesra* no. 80 under *khata* no. 307 having area one acre 60 ½ decimal through registered sale-deed dated 14.05.2015 along with other land from one Vijay Chandra Das and got mutated her name in *serista* of State of Bihar vide mutation appeal no. 44/2015-16 dated 09.12.2016. After the mutation, the petitioner has been regularly paying the rent and obtaining rent receipts. The Circle Officer, Shahkund, Bhagalpur issued land possession certificate in the name of the present petitioner. The demarcation was also done by the Circle Officer, Shahkund. The vendor of the petitioner purchased the land through registered sale deed dated 19.11.1958 from one Rama Kant Mishra, who purchased the land on 19.09.1940 through registered sale-deed from one Brij Mohan Lal Das. The execution of sale-deeds shows continuous and peaceful possession on the suit property of *khesra* no. 80, *khata* no. 307 since 1940 either of the vendors or the petitioner herself. Thus, the petitioner is the absolute owner of the suit land. Learned counsel further submitted that the suit land of Title Suit No. 109 of 1993 pertains to *Mouza-Fatehpur, Anchal-Shahkund*, District-Bhagalpur bearing *khata* No. 307 *Khesra*



Nos. 96, 191, 192, 725, 245, 568, 567, 704 and 80 having area in acres and decimals as follows: 3.48, 2.83, 2.79, 7.45, 28.19, 1.59, 2.69, 2.30, 3.76 – total area 55.08 acres. The claim of the petitioner is on 01 acre 60 ½ decimals of *khesra* no. 80 of *khata* no. 307.

06. Learned counsel further submitted that the impugned order is arbitrary and malafide and has been passed without application of judicial mind and is without jurisdiction. The learned court below committed error in not considering the fact as well as law on the point that intervenor-petitioner is a necessary party because she is a bonafide purchaser for part of suit land and has also got her name mutated in the Register-II. Land possession certificate has been issued to her with order of demarcation and she has been paying the rent to the State of Bihar. Learned counsel further submitted that the petitioner, being rightful owner having title and possession of the part of suit land, is not only a proper party rather she is a necessary party. But, by rejecting the prayer for impleadment of the petitioner, the learned trial court has unnecessarily created complication in the matter and if any final judgment is passed in future in absence of the petitioner, it will affect the right, title and possession of the petitioner which would cause irreparable



loss to her and at the same time compel her to file another suit for enforcing her right.

Learned counsel for the petitioner relied on the decision of this Court in the case of ***Gauri Shankar Pathak v. Shankaranand Upadhyay***, reported in ***2011 (2) PLJR 547*** wherein the learned Single Judge allowed the petition of a *lis pendens* transferee for his impleadment as party respondent in the appeal in view of the decision of Hon'ble Apex Court in the case of ***Amit Kumar Shaw v. Farida Khatoon***, reported in ***(2005) 11 SCC 403***. Learned counsel further relied on the decision of this Court in the case of ***Md. Kamaluddin v. Laxmi Devi***, reported in ***2014 (2) PLJR 125***, wherein the learned Single Judge held that position of a person on whom any interest has devolved on account of a transfer during pendency of a suit or a proceeding is similar to the position of an heir or legatee of a party who died during the pendency of the suit or proceeding and transferee could not be turned away when he applies for being added as a party in the suit. The said view of the learned Single Judge was based upon the decision of Hon'ble Apex Court in the case of ***Thomson Press (India) Ltd. v. Nanak Builders and Investors Private Limited***, reported in ***(2013) 5 SCC 397***.



07. On the other hand, the contention of the petitioner was vehemently opposed by the learned counsels appearing for the State as well as respondent nos. 8, 10, 11 and 12. It has been on behalf of respondents that the present petition is not maintainable and the learned trial court has rightly rejected the intervention petition of the petitioner. The petitioner is not a necessary party in the suit as the survey *khatiyā* was published in the name of State of Bihar, showing some persons as *Avaiddh Dakhalkar*. Hence, only State of Bihar and other persons being shown as ‘*Avaiddh Dakhalkar*’ are necessary parties. The name of the intervenor-petitioner has not been shown as ‘*Avaiddh Dakhalkar*’ in *khatiyā*, so she is not a necessary party. The claim of the petitioner is based on sale-deed dated 14.05.2015 from one Vijay Chandra Das, but the vendor of the petitioner was also not having any right to transfer the said land as *khatiyā* did not show his name. Further the sale deed dated 14.05.2015 is hit by principle of *lis pendens* because the suit has been filed in the year 1993 and the petitioner purchased the land in the year 2015. Taking all these facts into consideration, the learned Munsif-II, Bhagalpur rightly rejected the application filed under Order 1 Rule 10 read with Section 151 of the Code.

08. I have given my thoughtful consideration to the



rival submission of the parties. 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.”

09. Obviously, the court has got ample power to strikeout 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 by the court for effectually and completely to adjudicate upon and settle all the questions involved in the suit. 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 in Para-22 has held as under:-

“22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not



about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.”

However, the discretion of the court under Order 1 Rule 10(2) of the Code is limited and such discretion could be exercised even against the wishes of the plaintiff only in case a party is found to be a necessary or proper party. Thus, the courts can order for impleadment even against the wishes of the plaintiff if a party has a direct and legal interest in the subject matter of the property. With regard to aforesaid proposition, reliance could be placed on the decisions of Hon'ble Supreme Court rendered in the case(s) of ***Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.***, reported in ***(2012) 8 SCC 384*** and ***Ramesh Hiranchand Kundanmal v. Municipal***



Corporation of Greater Bombay, reported in ***(1992) 2 SCC 524***.

10. Further, 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.

11. Further, the Hon'ble Apex Court in the case of ***Udit Narain Singh Malpaharia v. Addl. Member Board of Revenue***, reported in ***AIR 1963 SC 786*** 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.

12. Further, in the case of ***Razia Begum v. Sahebzadi Anwar Begum***, reported in ***AIR 1958 SC 886***, the Hon'ble Supreme Court has held that in a suit relating to property in



order that a third party may be impleaded, he should have a direct or legal interest in the subject matter of the litigation as distinguished from a commercial interest. Legal interest so interpreted means that the result of the suit would affect the third party illegally.

13. Now, coming back to the facts of the case, it is obvious that the petitioner claims her right, title and possession over a part of suit property which has been filed challenging the entry in revisional survey entry *khatiyan*. It is true that neither the vendor of the petitioner nor the petitioner herself have been mentioned in the *khatiyan* entry nor vendor was made party by the plaintiff but there could be no denial of the fact that the claim of the intervenor-petitioner on a portion of suit property is based upon registered sale deeds dated 19.09.1940 and 19.11.1958 and the same cannot be simply brushed aside. It is trite to say that *khatiyan* entry does not create or extinguish any right. So, the petitioner has been able to show substantial interest in the suit property and she could also claim certain relief(s) against the plaintiff and defendants. Further, any order or decree passed by the court would not be an effective decree in absence of the petitioner herein.

14. The Hon'ble Supreme Court in the case of



Suntibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.), reported in ***(2007) 10 SCC 82***, has held that a party having a semblance of interest in the suit property could be impleaded as intervenor in the suit. Therefore, the petitioner appears to be a necessary party who needs to be impleaded as one of the defendants in Title Suit No. 109 of 1993.

15. In the light of aforesaid facts and circumstances and discussion made hereinbefore, I do not think the impugned order could be sustained and hence, the order dated 26.03.2018 passed by the learned Munsif-II, Sadar, Bhagalpur in Title Suit No. 109 of 1993 stands set aside. In the result, the petition filed by the petitioner under Order 1 Rule 10 read with Section 151 of the Code is allowed. The learned trial court is directed to implead the intervenor-petitioner as defendant in Title Suit No. 109 of 1993.

16. Accordingly, the instant Civil Misc. Petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	21.02.2024
Uploading Date	18-03-2024
Transmission Date	NA

