

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.289 of 2023

1. Rajiv Kumar S/o Sri Ram Prasad Sah, Resident of Mohalla-Ruhailaganj, P.O.-Lalbagh, P.S.-LNMU, Registration, District-Darbhanga.
2. Smt. Reshmati Devi @ Rasmita Choudhary, W/o Sri Santosh Choudhary, Resident of Mohalla-Ruhailaganj, P.O.-Lalbagh, P.S.-LNMU, Registration, District-Darbhanga.
3. Smt. Chandrika Devi @ Chandrika Kumari W/o Sri Rajiv Kumar @ Raja, Resident of Mohalla-Ruhailaganj, P.O.-Lalbagh, P.S.-LNMU, Registration, District-Darbhanga.

... .. Petitioner/s

Versus

1. Nutan Raut (Traceless) W/o Deepak Raut @ Deepak Kumar Resident of Mohalla-Azam Nagar, P.O.-Lalbagh, P.S.-LNMU, Sub Registration and District-Darbhanga.
2. Modha Kumari (Traceless) D/o Deepak Raut @ Deepak Kumar Resident of Mohalla-Azam Nagar, P.O.-Lalbagh, P.S.-LNMU, Sub Registration and District-Darbhanga.
3. Siddhart Raut (Traceless) S/o Deepak Raut @ Deepak Kumar, Resident of Mohalla-Azam Nagar, P.O.-Lalbagh, P.S.-LNMU, Sub Registration and District-Darbhanga.
4. Kartik Raut (Traceless) S/o Deepak Raut @ Deepak Kumar, Resident of Mohalla-Azam Nagar, P.O.-Lalbagh, P.S.-LNMU, Sub Registration and District-Darbhanga.
5. Mr. Aditya Choudhary, S/o Late Santosh Choudhary, Resident of Mohalla-Ruahilaganj, P.O.-Lalbagh, P.S.-LNMU, Registration, District-Darbhanga.
6. Pratibha Kumari, D/o Late Santosh Choudhary, Resident of Mohalla-Ruahilaganj, P.O.-Lalbagh, P.S.-LNMU, Registration, District-Darbhanga.
7. Sri Shambhu Pradhan, S/o Sita Ram Pradhan, Resident of Mohalla-Ruahilaganj, P.O.-Lalbagh, P.S.-LNMU, Registration, District-Darbhanga.
8. Harilal Paswan Scribe, S/o Name not known, Resident of Mohalla-Birna, Registration Officer and District-Darbhanga.
9. The District Sub-Registrar of Darbhanga Registration Office, Darbhanga.
10. The State of Bihar through Collector and District Registrar, Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Dubey, Advocate Mr. Kumar Gaurav, Advocate Mr. Shashank Kashyap, Advocate
For the State	:	Md. Khurshid Alam, AAG-12 Ms. Nutan Sahay, AC to AAG-12
For the Respondent/s	:	Mr. Abbas Haider, Advocate Mr. Wasi Mohammad, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 25-07-2024

Heard learned counsel for the parties and I intend to dispose of the petition at the stage of admission itself.

02. The present petition has been filed under Article 227 of the Constitution of India against an order dated 23.09.2022 passed by learned Sub-Judge, 5th, Darbhanga in Title Suit No. 66 of 2009 whereby and whereunder the learned trial court allowed the petition dated 01.08.2019 filed by intervenors/plaintiffs with a prayer to treat their averment made in petition dated 29.11.2012 filed under Order 1 Rule 10(2) of the Code of Civil Procedure (hereinafter “the Code”) as pleading on their behalf.

03. Briefly stated, the facts of the case are that original plaintiff namely Deepak Raut filed Title Suit No. 66 of 2009 against the defendants/petitioners seeking the following reliefs:

“a) That on consideration of the facts and circumstances stated above it will be declared that the general power of attorney in respect of Sche.1 land detailed below was alleged to be got executed from the plaintiff in the state of intoxication in the senselessness condition without knowing and without understanding the contents of the alleged general power of attorney dated 30.07.2007, 18.08.2007 and it is admitted for execution on 18.09.2007 in collusion with the defendant 3rd party 4th party conveying power to deal with the property of the plaintiff to defendant 1st party which may be

declare forged, fabricated and fraudulent.

(b) That, on the basis of alleged general power of attorney the alleged sale deed dated 08.10.2007 in respect of Schedule 1 land is executed by defendant 1st party in favour of 2nd party be declared fraudulent, forged, inoperative, without consideration, void abinitio and not binding upon the plaintiff and never bestowed any right, title and possession to defendant 1st party and defendant 2nd party at any cost.

(c) That any other relief or reliefs deemed proper and fit to be passed in favour of the plaintiff.

(d) That the cost of the suit be awarded to the plaintiff against the defendant 1st party and defendant 2nd party.”

The defendants appeared and filed their written statement raising the question of maintainability of the suit apart from other objections. It further appears that Court has examined 4-5 witnesses till November 2011 and thereafter, an application dated 29.11.2012 has been filed on behalf of intervenors (wife and sons and daughter of the original plaintiff), with a prayer to add them as party defendants on the ground that they were also having interest in the suit as the property in question was ancestral property. The petition of the intervenors was allowed *vide* order dated 05.02.2013. Subsequently, the original plaintiff was deleted *vide* order dated 19.06.2015 as he became traceless. Meanwhile, intervenors filed an application dated 02.05.2013 under Order 6 Rule 17 of the Code with a prayer to amend the plaint. But the

prayer was rejected by the learned trial court *vide* order dated 01.12.2017. Thereafter, the intervenors filed another application dated 01.08.2019 with a prayer to grant permission to them for adopting the averments made in the petition filed under Order 1 Rule 10(2) of the Code dated 29.11.2012 as their pleading. A rejoinder was filed by the defendant/petitioner. After hearing the parties, the learned trial court allowed the petitioner *vide* impugned order dated 23.09.2022.

04. Learned counsel for the petitioner submits that the impugned order is not sustainable as it has been passed without appreciating the facts and the applicable law. There is no provision under the law to allow the intervenors to adopt the contents of intervenor application to be treated as their pleadings since the pleadings in the form of plaint of the original plaintiffs were already on record. By allowing the petition of the intervenors the learned trial court, in effect, allowed two complaints to be brought on record which is not permissible. The learned counsel further submits that the intervenors succeeded in getting the relief which they failed to achieve by way of their amendment petition. The intervenors did not challenge the rejection of their earlier amendment petition and the said order has attained finality. The learned counsel further submits that a completely wrong finding has been recorded by the learned trial court in the impugned order

that there was no pleading on behalf of the intervenors on record but the said finding is incorrect as the plaint of the original plaintiff was already on record and the intervenors were already arrayed in the suit as co-plaintiffs. Thus, the learned counsel submits that the impugned order is not sustainable and the same being against the law needs to be set aside.

05. Learned counsel appearing on behalf of the intervenors/plaintiffs/respondents submits that it could not be said that there are two plaints on record. The intervenors brought on record their pleadings to supplement the original plaint and it could not be said that there was any infirmity in the same. The original plaintiff has no right to execute the power of attorney in favour of the petitioners as the present plaintiff was not having any right and title in the ancestral property for which the power of attorney was given. The learned trial court has considered each aspect of the matter and came to a finding that there was no pleadings on behalf of the intervenor and no prejudice would be caused to the petitioners/defendants. Furthermore, there is no other option for the intervenors/respondents to bring their pleadings on record since they made a prayer before the learned trial court for making them defendants but they were made co-plaintiffs. Learned counsel further submits that they have filed a separate Title Suit No. 15 of 2018 asserting their rights in this regard. Learned

counsel further submits that the intervenors were not substituted in place of the original plaintiff and as they have been impleaded separately, they have their own rights. Learned counsel thus submits that there is no infirmity in the impugned order.

06. Having regard to the rival submissions in the lights of facts and circumstances of the case, the issue before this Court is whether the intervenors could have been allowed to adopt their intervention petition as their pleading while there was plaint of the original plaintiff already on record.

Order 6 Rule 1 of the Code reads as under:

“1. Pleading.-"Pleading" shall mean plaint or written statement.”

There is no other form of pleading provided under the law. The intervenors’ petition sought to be brought on record as pleadings should be considered in the light of specific provision. The option open for intervenors in such condition is either to adopt the pleading already on record or seek amendment in such pleading. The intervenors could not be allowed to bring their own plaint on record when there is already the plaint of the original plaintiff on record. For this reason, whatever has been submitted on behalf of the respondent about condition precedent under Order 6 Rule 6 of the Code would not be applicable to the facts of the case. If the intervenors were having any objection to the original plaint and wanted to introduce certain facts, the course open to them was under Order 6 Rule 17 of the Code and they duly took

recourse to the same and it was refused by the learned trial court. Once the intervenors adopted that course, the subsequent prayer of the intervenors to adopt their intervenor petition as their pleading is just a colourable exercise. What they could not achieve through their amendment they tried to bring on record through their intervenor petition which could not be permitted. So far as submission of learned counsel for the respondent that they were not substituted in place of original plaintiff, the said submission is without merit for the reason that the intervenors came up on record when the original plaintiff was still there and they themselves sought their impleadment as intervenors which was allowed by the Court and they continued as co-plaintiff. They did not challenge that order of impleadment so subsequently, they cannot claim that they have not be substituted as defendants. If the plaintiff had gone traceless, the petitioners could have moved before the learned trial court for their substitution in the place of the plaintiff but they were already parties as co-plaintiffs. After deletion of name of the plaintiff, the intervenor entered into the shoes of the plaintiff. The intervenors could not now take advantage of this fact that the original plaintiff has gone traceless.

07. Another aspect which should be taken note of by this Court is that the intervenors were all along knowing about the consequences and what was the option available to them and they

exercised all their options. The intervenors filed their amendment petition which was rejected and thereafter they filed Title Suit No. 15 of 2018 which according to the learned counsel for the respondents/intervenors was for asserting the same rights. If these facts are taken into consideration, the intervenors appear guilty of concealing the facts from the learned trial court about filing of the title suit against the petitioners with almost similar relief.

08. In the light of aforesaid discussion, I am of the considered opinion that the impugned order is not sustainable and hence, the same is set aside.

09. As a result, the present civil miscellaneous petition stands allowed.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	AFR
CAV DATE	N/A
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