

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.343 of 2023

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Dera Sahi Samadan Patiala A Dera of Udasin Sect of Baba Sri Chandra Jee through Mahanth Deepinder Das, Gender Male, aged about 40 years, Chela Mahanth Jagat Ram, at New Dal Dalian Patiala, Punjab, being the Superior of Dera of Udasin Sangat, Mohalla- Madhubani, Police Station- K. Hat in the district of Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through District Magistrate cum Collector, Katihar.
2. Madan Kumar Das, Son of Late Mahanth Pancham Das Resident of Mohalla- Madhubani, Police Station- K. Hat in the district of Purnea, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate Mr. Sunil Kumar, Advocate Mr. Manoj Kumar, Advocate Mr. Himanshu Shekhar, Advocate
For the Respondent no.2 :		Mr. Raju Giri, Advocate Mr. Harsh Vardhan, Advocate Mr. Kumar Shantanu, Advocate
For the State	:	Mr. Shahid Siddique, AC to AAG 5

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 29-10-2024

The instant petition has been filed by the petitioner under Article 227 of the Constitution of India for quashing the order dated 22.02.2023 passed by the learned Sub-Judge-I, Katihar in Title Execution Case No. 01 of 2015 whereby and whereunder the application dated 14.09.2021 filed on behalf of the petitioner has been rejected.

2. The conspectus of the case, as it emerges from the record, is that the petitioner is a religious organization and is represented by its Mahanth Deepinder Das. One Udasin



Sampraday is a sect of worshipers having a number of movable and immovable properties in the towns of Purnea, Araria, Khagaria, Katihar and the properties are under control and management of Ati Prachin Udasin Bari Sangat, Madhubani, Purnea. Respondent no.2, claiming himself to be Sevayat Mahanth of this Ati Prachin Udasin Bari Sangat, filed Title Suit No. 16 of 1992 seeking declaration of right, title and interest over the suit lands with further declaration that defendants have got no right, title or interest. Further declaration was sought that entry in the name of State of Bihar with respect to the suit land in municipal survey was completely illegal, baseless and not tenable in the eyes of law. A decree for recovery of possession was also sought apart from other reliefs. The learned trial court after consideration of the material before it dismissed the suit of the plaintiffs. However, the plaintiffs challenged the judgment and decree of the learned trial court before the High Court by filing First Appeal No. 270 of 1996 which was allowed vide judgment dated 09.10.2014 and the impugned judgment and decree passed by the learned trial court was set aside. Subsequently, vide order dated 07.03.2017 passed in Civil Review No. 29 of 2015, in First Appeal No. 270 of 1996, paragraph no. 38 of the judgment was modified and the civil



review petition was allowed. It further transpires that being aggrieved by the judgment dated 09.10.2014 passed in First Appeal No. 270 of 1996, the defendants of the title suit filed petition for Special Leave to Appeal No. 5023 2015 before the Hon'ble Supreme Court. Further against the order dated 07.03.2017 passed in Civil Review No. 29 of 2015, Deepindar Das filed appeal before the Hon'ble Supreme Court for which Diary No.19160 of 2017 was allotted. However, SLP No. 5023 of 2015 and appeal bearing Diary No. 19160 of 2017 came to be dismissed vide order dated 14.01.2020 by the Hon'ble Supreme Court. After judgment dated 09.10.2014 passed in F.A. No. 270 of 1996, the respondent no.2 filed Title Execution Case No. 1 of 2015 before the court of learned Sub Judge-I, Katihar and in the said execution case, petitioner filed a petition dated 14.09.2021 (wrongly mentioned in the impugned order as 04.01.2022) to implead him as party in Title Execution Case No. 1 of 2015. The respondent no.2 filed his rejoinder on 25.11.2022 opposing the application filed on behalf of the petitioner. Meanwhile, respondent no.2 tried to sell the property of the sect but the district administration restrained him from execution of sale deed and respondent no.2 approached the High Court by filing CWJC No. 16299 of 2021 for direction to the Registrar to



permit the petitioner to present the sale deed for registration for 8.28 acres of land situated in the district of Katihar and the writ petition was allowed vide order dated 28.07.2022. Coming to know about the order dated 28.07.2022 passed in CWJC No. 16299 of 2021, the petitioner preferred Civil Review No. 189 of 2022 which was dismissed as not pressed vide order dated 11.10.2022. Thereafter, the petitioner preferred L.P.A. No. 638 of 2022 against the order dated 28.07.2022 passed in CWJC No. 16299 of 2021 which was disposed of vide order dated 01.02.2023. It further transpires that the learned executing court, after considering the matter in hand, rejected the application dated 14.09.2021 filed on behalf the petitioner vide order dated 22.02.2023 which is under challenge before this Court.

3. Learned senior counsel Mr. J.S. Arora appearing on behalf of the petitioner submitted that the impugned order has been passed without appreciation of the facts and circumstances of the case. Mr. Arora further submitted that the learned executing court has not considered the fact that the petitioner represents Dera Sahi Samadan, Patiala and referred to the resolution dated 13.12.2005 of a congregation of Sadhus and Mahanths for appointing Deepinder Das as Mahanth of Dera Sahi Samadhan and further referred to disposal of LPA No. 541 of



1994 and other analogous cases on 10.04.2015 by Punjab and Haryana High Court in support of claim about status of Deepinder Das. Mr. Arora further submitted that Dera Sahi Samadhan, Patiala is the governing body of Ati Prachin Bari Sangat and being the controlling body, only the petitioner can take decisions about the affairs of the Udasin Sangat and not the respondent no.2 who is hardly said to be a Mahanth. Mr. Arora further submitted that in Civil Review No. 29 of 2015, the learned Single Judge of this Court held that the Udasin Sangat has title over the suit property and the respondent no.2 was the Mahanth. The title of respondent no.2 was not declared over the suit property and respondent no.2 is incompetent to enter into sell purchase of property of Udasin Sangat. Mr. Arora further submitted that Udasin Sangat has its superior Akhara at Patiala and it is under the control of the superior Akhara and the whole proceeding by respondent no.2 has taken place without knowledge of the superior Akhara. As the Ati Prachin Udasin Sangat was not properly represented and respondent no.2 filed execution case himself claiming him to be representing Ati Prachin Udasin Sangat, respondent no.2 was incompetent to represent the Udasin Sangat which was decree holder no.2. But this fact was not considered by the learned executing court that



decree holder no.2 has not been made party, therefore, the rejection of the application of Deepindar Das for his appearance on behalf of decree holder no.2 is completely wrong, illegal and baseless. The learned executing court failed to exercise the jurisdiction vested in it and, hence the impugned order is liable to be quashed and set aside. Mr. Arora further submitted that respondent no.2 has no right or title over the property of the Ati Prachind Udasin Sangat which is property of the petitioner and he has wrongly filed the execution case for which he was not competent. For the aforesaid reason petitioner is a necessary party and should have been added to represent Ati Prachin Udasin Sangat, the original plaintiff no.2. Mr. Arora further submitted that the impugned order is a non-speaking order and has been passed without discussion of the contention taken on behalf of the petitioner and hence, it is a cryptic order and not sustainable.

4. *Per contra*, learned counsel Mr. Raju Giri appearing on behalf of respondent no.2 submitted that there is no infirmity in the impugned order and the same is correct and proper and a valid order which needs to be affirmed. Mr. Giri submitted that the filing of petition for impleadment under Order 1 Rule 10(2) of the Code is itself wrong as there is no



provision for impleadment under Order 1 Rule 10(2) of the Code as the said provision is not applicable to the proceeding for execution. Learned counsel referred to the decision of the Himachal Pradesh High Court in the case of ***State Bank of Patiala vs. Alpna Industries & Anr.***, reported in ***1990 SCC OnLine HP 25***, wherein the learned Single Judge has held that Order 1 Rule 10 of the Code of Civil Procedure is applicable only during the proceeding in a suit. Such powers under Order 1 Rule 10(2) can only be exercised when the proceedings are alive and still pending. Thus, once the adjudication itself of all the disputes in the case is over, this provision cannot be made use of by any party. The petitioner has been set up by the judgment debtors after the judgment debtors/defendants lost in the first appeal as the suit was filed also for evicting the trespassers. Learned counsel further submitted that even the petition filed under Order 1 Rule 10(2) of the Code was filed while suppressing the material facts. Though the petitioner mentioned about the order of civil review, the petitioner failed to mention about the dismissal of special leave petition filed by the petitioner challenging the order of Civil Review No. 29 of 2015. The petitioner has also suppressed the fact about dismissal of special leave petition against the judgment and decree of the



first appeal as the SLP No. 5023 of 2015 was dismissed vide order dated 14.01.2020. This fact was also not mentioned in the application filed for impleadment. The learned counsel further referred to the decision of the Hon'ble Supreme Court in the case of ***Prestige Lights Ltd. vs. State Bank of India***, reported in ***(2007) 8 SCC 449***, wherein the Hon'ble Supreme Court held that it is of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

5. Mr. Giri further submitted that the petitioner is a rank outsider and is not the Mahanth of any religious organization. Further the religious organization is not under control and management of Deepinder Das. The land in question is under the control and management of respondent no.1. The lands were purchased by ancestor of respondent no.2 by registered sale deed and for eviction of the trespasser, the title suit was filed by respondent no.2. The respondent no.2 was further declared Mahanth of Ati Prachin Udasin Sangat and title of Ati Prachin Udasin Sangat was declared by this Court in First



Appeal No. 270 of 1996. Since the affirmation of judgment and decree of the first appeal by the Hon'ble Supreme Court, there remains no need for respondent no.2 to establish that he is the duly appointed Mahanth. Jamabandi has also been created in the name of respondent no.2 and the same is reflected on the website of Revenue and Land reforms Department. The land possession certificate for lands in question has been issued in favour of respondent no.2. When the respondent no.2 was not being allowed to execute the sale deeds, he filed CWJC No. 16299 of 2021 which was allowed vide order dated 28.07.2022. Civil Review No. 189 of 2022 filed by the petitioner was dismissed as not pressed vide order dated 11.10.2022. Mr. Giri further submitted that Deepinder Das without any authority from Dera Sahi Samadan Patiala preferred LPA No. 638 of 2022 which was heard and disposed of vide judgment dated 01.02.2023. Respondent no.2 has filed a civil review for some clarification bearing Civil Review No. 96 of 2023 for review of the judgment and order dated 01.02.2023 passed in LPA No. 638 of 2022. The learned Single Judge in CWJC No. 16299 of 2021 has relied on the Division Bench decision of this Court in the case of ***Bihar Deed Writers Association vs. The State of Bihar & Ors.***, reported in ***AIR 1989 Patna 144***, wherein it has been



held that if a document otherwise complying with the statutory requirements and formalities is presented for registration, the registering authority is duty bound to register it. It is not for the registering authority to enquire and ascertain the title to its own satisfaction. The Division Bench further held that under the provisions of the T.P. Act, 1888, if the transferor does not have any title or has an imperfect title to the property, the transferee on transfer will either get no title or will get an imperfect title. This will be to the prejudice of the transferee and is not of any concern to the registering authority.

6. Learned counsel further submitted that Mahanth Jagat Ram of Dera Sahi Samadhan Patiala also issued an authority letter on 20.04.2006 for control and management in favour of respondent no.2 and even authorized respondent no.2 to sell the lands or lease the lands. Learned counsel further submitted that the reference to the LPA No. 541 of 1994 before the Punjab and Haryana High Court has no bearing in the present matter as the State has taken over the Dera and petitioner is an outsider. The learned counsel further submitted that the petitioner and the judgment debtors want to delay the execution proceeding and for this reason they have putting obstacles by filing different applications. Such tendency has



been deprecated by the Hon'ble Supreme Court in the case of ***Predeep Mehra Vs. Harijivan J. Jethwa (Since Deceased Thr. LRS.) & Ors.***, reported in ***2023 SCC OnLine SC 1395*** in strong terms holding that pure civil matters take a long time to be decided and regretfully does not end with a decision as execution of a decree is an entirely new phase in the long life of civil litigation. The Hon'ble Supreme Court further held that inordinate delay which is universally caused throughout India in the execution of a decree has been a cause of concern with this Court for several years and quoted the decision of the Hon'ble Supreme Court in the case of ***Rahul S. Shah vs. Jinendra Kumar Gandhi and Others***, reported in ***(2021) 6 SCC 418***, wherein it has been observed that a remedy which is provided for preventing injustice is in fact being misused to cause injustice by preventing timely implementation of orders and execution of decrees. It has been further observed that the execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice. Mr. Giri further submitted that in the rejoinder to the counter affidavit, the petitioner has mentioned about the fact that he has filed Miscellaneous Case No. 03 of 2023 for declaring the respondent



no. 2 that he is not *Mahant* of the Ati Prachin Udasin Sangat, Madhubani, which is pending for final adjudication before the court of learned Additional District Judge-II, Katihar and at the same time the petitioner also sought impleadment in the execution proceeding seeking impleadment but two parallel proceedings are not permissible in law. In this regard, Mr. Giri referred to the decision of the Hon'ble Supreme Court in the case of ***State Of Himachal Pradesh & Ors. vs. Surinder Singh Banolta***, reported in ***2006 (12) SCC 484***, wherein the Hon'ble Supreme Court held that two parallel proceedings cannot be allowed to continue at the same time.

7. By way of reply, Mr. Arora submitted that the wrong mentioning of provision would not dis-entitle the petitioner from the relief which he is entitled for. Mr. Arora referred to the decision of the Hon'ble Supreme Court in the case of ***Pankajbhai Rameshbhai Zalavadiya vs. Jethabhai Kalabhai Zalavadiya (Deceased) through LRS & Ors.***, reported in ***(2017) 9 SCC 700***, paragraph no. 16 of which reads as under:-

“16. In the matter on hand, though the trial court had rightly dismissed the application under Order 22 Rule 4 of the Code as not maintainable at an earlier point of time, in our considered opinion, it needs to be mentioned that



the trial Court at that point of time itself could have treated the said application filed under Order 22 Rule 4 of the Code as one filed under Order 1 Rule 10 of the CPC, in order to do justice between the parties. Merely because of the non- mentioning of the correct provision as Order 1 Rule 10 of the Code at the initial stage by the advocate for the plaintiff, the parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the Courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule 10 CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add any one as a plaintiff or defendant if it finds that such person is a necessary or proper party. The Court under Order 1 Rule 10(2) of the Code will of course act according to reason and fair play and not according to whims and caprice.”

8. I have considered the submission made on behalf of the parties and in the light of facts and circumstances as reflected from the record. At the outset, I must make this point clear that the issue of filing the petition for impleadment in the execution proceeding is quite material. It is not only a question



of wrong mentioning of the provision but whether impleadment in such manner could at all be allowed. There could be no quarrel with the fact that there would be no application of Order 1 Rule 10(2) of the code in the execution proceeding. Reference could be made on the decision of the Himachal Pradesh High Court in the case of ***State Bank of Patiala*** (supra), on the decisions of the Andhra Pradesh High Court in the cases of ***Ali Khan And Ors. vs. Special Deputy Collector Land Acquisition (Industries)***, reported in ***AIR 1973 AP 298*** and ***Ramader Appala Narasinga Rao vs Chunduru Sarada***, reported in ***AIR 1976 AP 226***. Learned senior counsel for the petitioner has not been able to satisfy this Court as to how impleadment could be asked in an execution proceeding filed by one of the decree holders/plaintiffs unless the persons seeking impleadment is the authorized representative or successor. The petitioner's claim to be the superior body of plaintiff no.2 but the said claim is based merely on the self declaration of the petitioner and there is no declaration from any competent court of law on this point. It is also material to note here that much stress has been put by the learned senior counsel for the petitioner on the review order of this Court but the review did not change the outcome of the judgment of the first appeal. It only states the obvious and



clarifies the same that the property belongs to plaintiff no.2 and it also declares that plaintiff no.1 to be a Mahanth and the said position got affirmed by dismissal of Special Leave Petition. There is not an iota of material to show the interest of the petitioner to enable him to stake a claim to be impleaded as a party in execution proceeding filed by respondent no.2. Even the challenge to Civil Review No. 29 of 2015 of this Court has been by the Hon'ble Supreme Court in Diary No. 19160 of 2017 vide order dated 14.01.2020 while allowing liberty to the petitioner to take recourse to appropriate proceeding. But the method adopted by the petitioner for its impleadment in this manner is not permissible under the law.

9. It seems the petitioner has not been able to accept the fact that the petitioner did not get anything in civil review and for this reason challenged the same before the Hon'ble Supreme Court by way of special leave petition which was also dismissed. The petitioner has stressed upon the fact that the High Court in First Appeal No. 270 of 1996 upheld its *locus standi* to file civil review but the same does not mean upholding the right of the petitioner to represent decree holders/plaintiffs. At the same time it was the respondent no.2 who has all along been representing the plaintiff no.2/ Sri Sri 108 Ati Prachin Udasin Sangat and has filed the execution case, the learned executing court cannot go behind the



decree to take a decision on the claim of the petitioner to represent plaintiff no.2. In effect the petitioner seeks interpretation of the order of first appeal and civil review by the learned executing court which it is not competent to do as the learned executing court is only required to execute the decree and cannot go behind it. Moreover, petitioner has been seeking declaration of its status *vis-a-vis* the respondent no.2 in the execution proceeding by filing the impleadment application which is simply impermissible.

10. Therefore, without further discussion of the details and lengthy arguments made on behalf of the parties, I am of the opinion that though the petition for impleadment of the petitioner was rejected by an order which leaves much to desire in terms of reasoning, the result does not need any interference by this Court and, hence, the impugned order dated 22.02.2023 passed by learned Sub Judge-I, Katihar in Title Execution Case No. 01 of 2015 is affirmed.

11. As a result, the instant civil miscellaneous petition stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	24.09.2024
Uploading Date	30.10.2024
Transmission Date	NA

