

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6407 of 2012

1. Kishundeo Sah Son of Late Saukhi Lal Sah Resident of Village- Ganj Masuriya, P.O. and P.S.- Maker, District- Saran.
2. Kedar Sah alias Kedar Sao, Son of Late Saukhi Lal Sah Resident of Village- Ganj Masuriya, P.O. and P.S.- Maker, District- Saran.
- 3.1. Mosmat Parbati Devi Widow of Late Ramdeo Sah Resident of Village- Ganj Masuriya, P.O. and P.S.- Maker, District- Saran.
- 3.2. Suresh Sah Son of Late Ramdeo Sah Resident of Village- Ganj Masuriya, P.O. and P.S.- Maker, District- Saran.
- 3.3. Anita Devi, Daughter of Late Ramdeo Sah and Wife of Krishna Sah Resident of Village- Tarwar, P.O.- Rasulpur, P.S.- Amnaur, District- Saran.
- 3.4. Vinita Devi Daughter of Late Ramdeo Sah and Wife of Madan Sah Resident of Village and P.O.- Goldiganj, P.S.- Doriganj, District- Saran.
- 3.5. Vimal Devi Daughter of Late Ramdeo Sah and Wife of Gopi Sah at present resident of Village- Ganj Masuriya, P.O. and P.S.- Maker, District- Saran.
4. Paras Sah @ Paras Sao, Son of Late Mauji Sah Resident of Village- Ganj Masuriya, P.O. and P.S.- Maker, District- Saran.
5. Shankar Sah @ Shankar Sao, Son of Late Mauji Sah Resident of Village- Ganj Masuriya, P.O. and P.S.- Maker, District- Saran.

... .. Petitioner/s

Versus

1. Krishna Nand Rai Son of Late Etwar Rai Resident of Village- Kasba Maker Tole Ganj Masuriya, P.O. and P.S.- Maker, District- Saran.
2. Shailendra Rai, Son of Late Sheo Pujan Rai Resident of Village- Kasba Maker Tole Ganj Masuriya, P.O. and P.S.- Maker, District- Saran.
3. Yogendra Rai, Son of Late Shital Rai Resident of Village- Ganj Masuriya, P.O. and P.S.- Maker, District- Saran.
4. Rajendra Rai, Son of Late Indradeo Rai Resident of Village- Ganj Masuriya, P.O. and P.S.- Maker, District- Saran.
- 5.1. Most. Radhika Kuar Wife of Late Harendra Rai Resident of Village- Ganj Masuria, P.O. and P.S.- Maker, District- Saran.
- 5.2. Jitendra Rai Son of Late Harendra Rai Resident of Village- Ganj Masuria, P.O. and P.S.- Maker, District- Saran.
- 5.3. Dilip Rai Son of Late Harendra Rai Resident of Village- Ganj Masuria, P.O. and P.S.- Maker, District- Saran.
- 5.4. Sandeep Rai Son of Late Harendra Rai Resident of Village- Ganj Masuria, P.O. and P.S.- Maker, District- Saran.
- 5.5. Kamlesh Rai Son of Late Harendra Rai Resident of Village- Ganj Masuria, P.O. and P.S.- Maker, District- Saran.
- 5.6. Kalhi Devi Daughter of Late Harendra Rai Resident of Village- Ganj Masuria, P.O. and P.S.- Maker, District- Saran.



- 5.7. Suman Devi Daughter of Late Harendra Rai Resident of Village- Ganj Masuria, P.O. and P.S.- Maker, District- Saran.
- 5.8. Annu Kumari Daughter of Late Harendra Rai Resident of Village- Ganj Masuria, P.O. and P.S.- Maker, District- Saran.
6. Sahindar Rai, Son of Late Moti Rai Resident of Village- Ganj Masuriya, P.O. and P.S.- Maker, District- Saran.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Nagendra Rai
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

8 19-02-2024 Heard the learned counsel for the petitioners.

2. No one appears for the respondent 1st set/intervenors . On 01.02.2024 and 29.01.2024 also none had appeared on behalf of the respondent 1st set/intervenors.

3. It appears that the advocate for respondent 1st set/intervenors has lost interest in the matter.

4. The present application has been filed for quashing the order dated 14.09.2009 passed by Munsif-II, Chapra in Title Suit No. 33 of 2009 by which he has allowed intervenor application of the respondent 1st set to implead them as defendants.

5. It has been contended by the learned counsel for the petitioners that plaintiffs/petitioners have filed Title Suit No. 33 of 2009 before Munsif-II, Chapra against the defendants/respondents 2nd set. Plaintiffs/petitioners have sought



the relief of declaration of title over schedule 2 of the plaint and for recovery of possession over the same after removal of encroachment by the defendants/respondents 2nd set. Plot no. 11360 stands recorded in *R.S. Khatian* as *Dih Basgit* in possession of *Raktu Sah* and the plaintiffs/petitioners are the legal heirs of *Raktu Sah*.

6. It has further been contended by the learned counsel for the petitioners that the western portion of the plot no. 11360 is vacant for growing vegetables etc., and their residential house is in eastern portion. Plot no. 11361, measuring 2 *katha*, 14 *dhurs* was lying as a ditch at the time of *R.S. Khatian* whose landlords were *Thakur Prasad* and *Raghunandan Prasad* of *Parsadi* Estate and the landlords have orally settled plot no. 11361 to *Raktu Sah* for agricultural purpose and also executed a *Patta* as a memorandum of settlement. The ancestor of the plaintiffs filled up the aforesaid ditch, kept his *Nad*, *Khunta*, *Bathan* etc., and a *pucca Dalan* was also constructed in the eastern portion and western portion left vacant. Thus both plots are amalgamated and have structures in the eastern portion and vacant land in the western portion. He further submits that ex-landlords submitted return of these lands in the name of plaintiffs' ancestor at the time of vesting and



accordingly register-2 was prepared. Now, plaintiffs have been paying rent to the State Government of the aforesaid lands.

7. Learned counsel for the petitioners further submit that defendants/respondents 2nd set are contesting the suit and their main defense is denial of the plaintiffs/petitioners claim of the title and their further defense is that the Plaintiffs/petitioners or their ancestors have no concern with any portion of Plot Nos.11360 or 11361. He further submits that respondent 1st set at the instigation of the defendants/respondents 2nd set and with an ulterior motive of complicating the litigation have filed an intervenor petition for being impleaded as defendants in the suit.

8. The Intervenor/respondent 1st set claimed title and possession with respect to Plot No. 11361 only. They claimed that this plot had been orally settled to their ancestor *Sukdeo Raut* in 1994 by the ex-landlord *Sri Bachchoo Prasad* and a *patta* was also granted in proof of settlement since then *Sukdeo Raut* and his heirs including the intervenors came in possession of Plot No. 11361. A portion of this plot has been let out to the defendant *Yogendra Rai* over which he is running a flour grinding plant (*Aata Chakki*) as tenant. On 18.08.2009, plaintiffs/petitioners filed a rejoinder denying the intervenor's



claim as absolutely frivolous and *mala-fide* and reiterating their plea of title and possession and the plaintiffs in the rejoinder have also asserted that *Etwar Rai* sent a legal notice on 28.06.1993, making false claim and alleging encroachment over eastern 10 *dhurs* portion of plot no. 11361 by the plaintiffs' ancestor. The plaintiffs' ancestor sent a reply denying the claim of *Etwar Rai* and asserting their title and possession.

9. It has also been contended by the learned counsel for the petitioners that plaintiff has not sought any relief against the intervenors and, therefore, they are neither necessary nor proper party.

10. Learned counsel for the petitioners further submits that intervenors cannot be permitted to enlarge the scope of the suit. Petitioners/Plaintiffs being *dominus litis* cannot be forced to add someone as defendant unless his/her presence is necessary for the just decision of the case.

11. He also submits that if any judgment is passed in the suit, the same shall not be binding upon the intervenors, therefore, no prejudice shall be caused to them if the intervention is not allowed.

12. Learned counsel for the petitioners has also relied upon a judgment of this court in the case of ***Ram Kali***



Devi & Ors. Vs Gopal Tiwari & Ors; (2024)1 BLJ 251.

13. I have considered the submission of the learned counsel for the petitioners.

14. From reading the impugned order, it appears that no ground has been mentioned for allowing the intervention application by Munsif-II apart from the fact that he has only held that the claim of the intervenors should be decided along with the suit.

15. The intervenors do not claim through the defendant or the plaintiff and they are not the family member of either the plaintiff or the defendant. The intervenors are third party who cannot be allowed to intervene in a suit between two parties and their presence is not required for the just decision of the lis.

16. The intervenors have come out with a third case and they cannot be allowed to intervene in the suit.

17. Considering the law laid down in the case of Ram Kali Devi & Ors (Supra) and the facts of the present case, it is held that the respondent 1st set are neither necessary nor proper parties and therefore, the impugned order dated 14.09.2009 passed by Munsif-II, Chapra in Title Suit No. 33 of 2009 is hereby quashed and the present petition stands allowed.



18. The suit is of the year 2009. The suit shall proceed further and shall not be adjourned on mere asking. The suit must be decided within one year from the date of receipt/production of a copy of this order. The Munsif-II will proceed *ex parte* against the non-cooperating party.

19. With the aforesaid observation and direction, this application is allowed.

(Sandeep Kumar, J)

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