

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.533 of 2017**

Satya Narayan Thakur, S/o Late Lakhan Thakur, Resident of Village- Chichari Bujurg, P.S. and Anchal- Rajnagar, District- Madhubani.

... .. Petitioner/s

Versus

1. Shree Sidhi Nath Jha, S/o Shree Ganga Nath Jha, Resident of Village- Bittho, P.S. and Anchal- Pandaul, District- Madhubani.
2. The State of Bihar through the Collector Madhubani.
3. The Deputy Collector Land Reforms, Sadar Madhubani.
4. The Anchal Adhikari, Rajnagar Anchal, Rajnagar, District- Madhubani.
5. The Head Master, Rameshwar High School, Rajnagar, P.O. P.S. and Anchal- Rajnagar, District- Madhuba
6. Firan Thakur S/o Late Lakhan Thakur.
7. Kuldeo Thakur S/o Late Rameshwar Thakur.
8. Rajdeo Thakur S/o Jaldhar Thakur.
9. Ganesh Thakur S/o Shree Shiv Nath Thakur.
10. Smt. Urmila Devi W/o Shree Raj Kishore Thakur. All Resident of Village- Chichari Bujurg, Rajnagar, Pragana Bachhaur, P.S.- Rajnagar, District- Madhubani.
11. Dinesh Kumar Bhagat, S/o Late Ramchandra Bhagat, Resident of Village- Satghara Station Road, Rajnagar, District- Madhubani.
12. Bechan Yadav S/o Mahanthu Yadav, Resident of Village- Katiyauna, P.S.- Rajnagar, District- Madhubani.

... .. Respondent/s

**Appearance :**

|                         |   |                                  |
|-------------------------|---|----------------------------------|
| For the Petitioner/s    | : | Mr.Rabindra Nath Kanth, Advocate |
| For the State           | : | Mr.Sajid Salim Khan, SC-25       |
| For the respondent no.1 | : | Mr. Gajendra Kumar Jha, Advocate |
|                         |   | Mr. Sushil Kumar Jha, Advocate   |
|                         |   | Mr. Bam Bahadur Jha, Advocate    |

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**ORAL JUDGMENT**

**Date : 03-09-2024**

Heard learned counsels for the respective parties.

2. The present petition has been filed under Article  
227 of the Constitution of India challenging the order dated  
03.02.2017 passed by learned Sub Judge-V, Madhubani in Title



Suit No. 14 of 2013 whereby and whereunder the learned trial court rejected the application dated 27.05.2016 of the intervener petitioner filed under Order 1 Rule 10 (2) read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

3. The learned counsel for the petitioner submits that the respondent no.1 is plaintiff before the learned trial court and has filed Title Suit No.14/2013 for declaration of title with regard to Schedule I of the suit properties apart from seeking relief against the orders of the Sub-Divisional Officer, Sadar, Madhubani and the Deputy Collector Land Reforms, Madhubani as null and void and not binding upon the plaintiff. The learned counsel further submits that the suit land, as described in Schedule-I of the plaint, contains details of several plots of Khata No.1 including Plot Nos. 729 and 733, which belongs to the intervener-petitioner, however, the intervener-petitioner has not been made party in the suit. The petitioner purchased the land from one Kumar Yagneshwar Singh vide registered sale deed dated 28.09.2008 which his vendor was allotted as his share through registered Partition Deed dated 29.10.1957. The name of the petitioner has been mutated in respect of Old Plot No.729 (New Plot No.120, 150) having an area of 3 Katha 9 Dhoor and Old Plot No.733 (New Plot No.



120) having an area of 7 Katha 11 Dhoor, having total area 11 Katha vide order dated 07.01.2013 passed in Case No. 3032/12-13 by the Circle Officer. In the revisional survey, the Old Plot No.729 and 733 have been included in New Plot No. 120 under New Khata No. 495 and it was recorded in the name of *Bihar Sarkar Shiksha Vibhag*. The petitioner filed an application under Section 106 of BT Act for correction in the revisional survey *Khatian* and vide order dated 18.09.2010 passed in Case Nos.105/05 and 106/05, correction in the revisional survey *Khatian* has been allowed in favour of the petitioner. The learned counsel further submits that even in the orders, which have been challenged by the plaintiff, the name of the petitioner finds mentioned for being in possession of New Plot No. 120. The respondent no.1 has all along been knowing this fact, still he did not choose to implead the petitioner as defendant and sought declaration only against the State of Bihar and Rameshwar High School, which has been given adjacent plots by Rajnagar Estate over which school building etc. are situated. There is some agricultural land appended to the plot of the School, which is settled on yearly basis to the highest bidder. The petitioner has been one of the settlees by the school during different periods.

4. The learned counsel for the petitioner further



submits that the petitioner has got right, title and interest in the land appertaining to Plot Nos.729 and 733 (New Plot No. 120), Khata No. 1 (New Khata No. 495). But the learned trial court has not considered this fact and passed the impugned order only on the ground that the plaintiff has not sought any relief against the petitioner. However, learned trial court ought to have appreciated the fact that in the garb of seeking relief against Rameshwar High School with respect to several other plots of land, the plaintiff shrewdly included the Plot Nos. 729 and 733 as the suit property with which the said School has no concern and the petitioner, who is the real owner of the said land, has not been impleaded in the suit. Further the learned trial court ought to have considered the fact that while opposing the intervention application, the plaintiff has denied the right of the petitioner with respect to Plot Nos. 729 and 733, which clearly establishes the fact that the plaintiff has been disputing the right and interest of the petitioner over the Plot Nos. 729 and 733. Therefore, the finding recorded by the learned trial court that the plaintiff has no dispute with the intervener-petitioner is erroneous. The learned trial court failed to appreciate the fact that the right and interest of the petitioner with respect to Plot Nos. 729 and 733 is likely to be affected and the reliefs which the plaintiff has sought may affect the enjoyment of legal rights of intervener-



petitioner.

5. The learned counsel for the petitioner further submits that it is settled proposition of law that if a party having slightest interest in the suit proceeding is a proper party, though he may not be a necessary party, he should be impleaded to safeguard his interest. However, in the facts and circumstances of the present case, the intervener-petitioner is a necessary party whose presence is necessary to completely settle the question of title in respect of Plot Nos.729 and 733 and also for just decision of the case. Though the learned trial court has held that the petitioner is free to assert his right in an independent proceeding, but in order to avoid the multiplicity of the litigation, the petitioner ought to have been impleaded in the present proceeding.

6. On the other hand, learned counsel for the respondent no.1 vehemently contends that there is no infirmity in the impugned order and the same does not need any interference. The learned counsel further submits that the respondent no.1 has filed Title Suit No.14/2013 for declaration of title and confirmation of possession in respect of suit land which was settled in the name of father of the respondent no.1 on 17.06.1939 by the Ex-Landlord after payment of Rs.151/-. The settlement was followed by creation of *Jamabandi* in



respect of land measuring 5 *Bighas*, but due to error which crept in the revisional survey *Khatiyar*, 72 decimals of land was recorded in the name of School. For this reason, the respondent no.1 was compelled to file a declaratory suit against the State of Bihar and its authorities including the School. Specific prayer of respondent no.1 in the Title Suit No. 14/2013 is for correction of entries and declaration of title over the suit land and also for setting aside the orders of Sub-Divisional Officer and Deputy Collector Land Reforms and consequential reliefs have been sought from these authorities. No relief has been sought against the intervener-petitioner. The admitted claim of the intervener-petitioner is based on a subsequent deed dated 28.09.2008 and prior to the said date, there was no question of transfer of any immovable property against the provisions of Registration Act. The learned counsel further submits that as errors crept in the entries made in the revisional survey *Khatiyar* wherein the land has wrongly been categorized as “*Anabad Bihar Sarkar*”, the respondent no.1 filed the title suit. The learned trial court has rightly held that no relief has been sought against the intervener and the intervener was at liberty to assert his right in an independent proceeding though the intervener has got no case against the respondent no.1. Thus, learned counsel submits that there is no error in the impugned order and the same needs to be



sustained.

7. I have given my thoughtful consideration to the rival submission of the parties and also perused the records.

8. 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.”*

9. 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 discussed the law relating to impleadment of the parties. It will be relevant to quote paragraphs 13, 14, 15, 22, 25 & 27 of the said judgment:-

*“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he*



*does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:*

*“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.”*

*14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to*



*effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.*

*15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.*

*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.*

*25. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.*

*27. On a careful examination of the facts of this case, we find that the appellant is neither a necessary party nor a proper party. As noticed above, the appellant is neither a purchaser nor the lessee of the suit property and has no right, title or interest therein. The first respondent-plaintiff in the suit has not sought any relief against the appellant. The presence of the appellant is not necessary for passing an effective decree in the suit for specific performance. Nor is its presence necessary for complete and effective adjudication of the matters in issue in the suit for specific*



*performance filed by the first respondent-plaintiff against AAI. A person who expects to get a lease from the defendant in a suit for specific performance in the event of the suit being dismissed, cannot be said to be a person having some semblance of title in the property in dispute”.*

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 Supreme Court in the case of ***Sumtibai 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 a party in the suit.

12. In the instant case, the petitioner has been claiming his right, title and interest over certain portion of suit land. The said fact was even in the knowledge of the



plaintiff/respondent no.1 as declaration has been sought against the orders passed by the Deputy Collector Land Reforms as well as Sub-Divisional Officer wherein the interest of the petitioner has been mentioned with regard to the suit properties of Old Plots No. 729 and 733. Further, it has been submitted by the learned counsel for the petitioner that in a case filed under Section 106 of the BT Act, the order was passed in favour of the petitioner with regard the suit property of Old Plot No. 729 and 733 (New Plot No. 120). The petitioner is also claiming possession on the basis of *Jamabandi* created in his favour.

13. Considering all these facts, it could not be said that the petitioner is not having any semblance of interest and even though no relief has been sought against the petitioner, he appears to be a proper party in the facts and circumstances of the case.

14. In the light of facts and circumstances discussed here-in-above and in view of law laid down by the Hon'ble Supreme Court, I am of the considered opinion that the learned trial court committed error of jurisdiction when it dismissed the petition of the petitioner. Hence, the order dated 03.02.2017 passed by the learned Sub Judge-V, Madhubani in Title Suit No. 14 of 2013 is set aside. Consequently, the petition dated 27.05.2016 filed by the intervener-petitioner under Order 1 Rule



10 (2) read with Section 151 of the Code is allowed.

15. As a result, the instant petition stands allowed.

**(Arun Kumar Jha, J)**

V.K.Pandey/-

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