

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.479 of 2021

Lal Mohammad Son of Late Md. Shakeel Ansari Resident of Mohalla - Kajipura, Ward No. 2 in the municipality of Kalalgaon, P.S. - Kahalgaon, District- Bhagalpur.

... .. Petitioner/s

Versus

1. Bijoy Kumar Santhalia Son of Late Dwarika Pd. Santhalia Resident of Mohalla - Choudhary Tola Kahalgaon, P.S. Kahalgaon, District- Bhagalpur.
2. Smt. Ranjana Devi Santhalia Wife of Mahesh Kumar Santhalia Resident of Mohalla - Choudhary Tola Kahalgaon, P.S. Kahalgaon, District- Bhagalpur.
3. Jaikaran Mandal Son of Hari Charan Mandal Resident of Village - Sarakpur, P.S. Kahalgaon, District- Bhagalpur.
4. Vijay Prasad Mandal Son of Late Ghanshyam Mandal Resident of Village - Oriup, P.S. Kahalgaon, District- Bhagalpur.
5. Laxmi Narayan Mandal Son of Late Sipahi Mandal Resident of Village - Oriup, P.S. Kahalgaon, District- Bhagalpur.
6. Prem Kumar Mandal Son of Late Arjun Mandal Resident of Village - Oriup, P.S. Kahalgaon, District- Bhagalpur.
7. Birendra Mandal Son of Late Arjun Mandal Resident of Village - Oriup, P.S. Kahalgaon, District- Bhagalpur.
8. Lambodar Mandal Son of Late Arjun Mandal Resident of Village - Oriup, P.S. Kahalgaon, District- Bhagalpur.
9. Madan Kumar Mandal Son of Late Jagdish Mandal Resident of Village - Oriup, P.S. Kahalgaon, District- Bhagalpur.
10. Sanjeev Kumar Mandal Son of Late Jagdish Mandal Resident of Village - Oriup, P.S. Kahalgaon, District- Bhagalpur.
11. Shiv Narayan Mandal Son of late Bhuwneshwar Mandal Resident of Village - Oriup, P.S. Kahalgaon, District- Bhagalpur.
12. Dip Narayan Mandal Son of Late Bhuwneshwar Mandal Resident of Village - Oriup, P.S. Kahalgaon, District- Bhagalpur.
13. Baijnath Prasad Sahu Son of Late Vishnu Prasad Sah Resident of Village - Sahu Parbatta, P.S. Naugachchia, District- Bhagalpur.
14. Dinesh Prasad Sah Son of Late Vishnu Prasad Sah Resident of Village - Sahu Parbatta, P.S. Naugachchia, District- Bhagalpur.
15. Most. Meera Devi Wife of Late Mahesh Sah Resident of Village - Sahu Parbatta, P.S. Naugachchia, District- Bhagalpur.
16. Manu Sah Son of Late Mahesh Sah Resident of Village - Sahu Parbatta, P.S. Naugachchia, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bishwa Nath Chaudhary, Advocate



For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 07-10-2024

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

02. The present civil miscellaneous petition has been filed under Article 227 of the Constitution of India by the petitioner for quashing the order dated 03.04.2021 passed by the learned Sub Judge, Kahalgaon in Title Suit No. 605 of 2014, whereby and whereunder the petition filed by the petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') for his impleadment as defendant in the suit has been rejected by the learned trial court.

03. Learned counsel for the petitioner submits that the respondent nos. 1 and 2 are the plaintiffs before the learned trial court and they have filed a title suit with regard to property mentioned in Schedule-A of the plaint, which they acquired from the father of the petitioner vide registered sale deed no. 1889 dated 24.04.2012 and also challenged the wrong survey entry with respect to property as mentioned in Schedule-B of the plaint apart from seeking injunction. Learned counsel further submits that the father of the petitioner executed a sale deed for the suit property which was acquired by him vide sale deed



dated 05.07.1966 for $16\frac{3}{4}$ decimal of land. Learned counsel further submits that the defendant no. 1 appeared in the suit and filed his written statement wherein he claimed that the registered sale deed of the father of the petitioner dated 05.07.1966 was wrong, incorrect and illegal document which did not confer any title and possession in favour of Md. Shakil, father of the petitioner. Since an aspersion has been cast over the right of the father of the petitioner to execute sale deeds in favour of the plaintiffs and other defendants and 3.5 decimal land of the sale deed dated 05.07.1966 remains in the possession of the petitioner, the petitioner was compelled to move before the learned trial court seeking his impleadment in the Title Suit No. 605 of 2014. Learned counsel further submits that the learned trial court wrongly rejected the intervention petition without properly considering the facts and circumstances of the case. Learned counsel further submits that the learned trial court failed to appreciate that the suit land was purchased by the father of the intervenor-petitioner in the year 1966 through sale deed dated 05.07.1966 and on the basis of that sale deed, subsequent sale deeds were executed by the father of the petitioner for $13\frac{1}{4}$ decimal land and remaining 3.5 decimal land is in possession of the petitioner. The challenge made by



defendant no. 1 to the sale deed of father of the petitioner would directly affect the rights of the petitioner, who will be forced to agitate his right before the court of competent jurisdiction and in order to avoid multiplicity of the suit, the learned court ought to have allowed the petition filed by the petitioner for his impleadment. But this fact was not taken into consideration by the learned trial court and hence, the impugned order dated 03.04.2021 is not sustainable and it needs to be quashed.

04. Despite service of notice, none of the respondents appeared in the matter.

05. I have given my thoughtful consideration to the submission made on behalf of the petitioner and perused the case record. 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.”

06. Obviously, the court has got ample power to add or strike out 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 judiciously by the court for effectually and completely to adjudicate upon and settle all the questions involved in the suit. It does not give any right to any person to be impleaded as party.

07. In the facts of the present case, admittedly, the plaintiffs have brought the suit asserting their rights over the purchased land from their vendor, the father of the petitioner and their vendor acquired that land vide sale deed dated 05.07.1966. The plaintiffs have not sought any relief against the intervenor and the relief is against defendant no. 1. Further, the claim of the intervenor-petitioner is against the contention raised by defendant no. 1 in his written statement casting aspersion on the nature of the sale deed, through which the petitioner claims that his father acquired title over the suit land. The law is settled that *inter se* dispute of the defendants could not be allowed to be raised in a case filed by the plaintiffs against one or more of the



defendants. Further, it is to be seen whether there is any requirement of the intervenor-petitioner in the suit for effectually and completely to adjudicate upon and settle all the questions involved in the suit and whether the intervenor-petitioner is necessary or even proper property. From the admitted facts of the case, it is evident that the petitioner is not a necessary party because the suit could be decided in absence of the petitioner. So far as claim of the petitioner about being a proper party is concerned, I do not think that such claim is sustainable. Whatever is going to be decided by the learned trial court, it will be only with regard to the claim of the plaintiffs qua the Schedule-A and Schedule-B property of the plaintiff and the property of the intervenor-petitioner would remain unaffected.

08. 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. Apparently, the petitioner is neither a necessary party nor a proper party.

09. In the light of discussion made here-in-before, I do not think the impugned order dated 03.04.2021 passed by the learned Sub Judge, Kahalgaon in Title Suit No. 605 of 2014 suffers from any infirmity and hence, the same is hereby affirmed.

10. Accordingly, the present Civil Misc. Petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.10.2024
Transmission Date	NA

