

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1802 of 2018

1. Ramdular Mallah @ Ramdular Prasad, S/o Sukkhu Mallah
2. Rampyare Mallah, S/o Late Charitra mallah
3. Dindayal Mallah, S/o Late Lochan Mallah
4. Babulal Mallah, Son of late Lochan Mallah, All are resident of Mouza-Checharia Tola Bahera, P.S- Durgawati, District - Kaimur Bhabhua.

... .. Petitioner/s

Versus

1. Ramchandra Mallah, S/o Late Bahadur Mallah
2. Ashok Mallah, S/o Ramchandra Mallah
3. Mantu Mallah, S/o Ramchandra Mallah
4. Bajrangi Mallah, S/o Ramchandra Mallah
5. Ramayan Mallah, S/o Ramchandra Mallah, All are resident of Mauja Cheharia, Tola Bahera, P.S- Durgawat, District - Kaimur Bhabhua.
6. Sukhu Mallah, S/o Late Purushotam Mallah
7. Shyam Sundar Mallah, S/o Sukhu Mallah
8. Mithlesh Mallah, S/o Sukhu Mallah
9. Sunny Mallah
10. Satyam Mallah Both Minor sons of Shyam Sundar Mallah under the guardianship of their father namely Shyam Sundar Mallah
11. Nageshwar Malah, S/o Late Ramcharitra Mallah
12. Devmuni Mallah, S/o Late Ramcharitra Mallah
13. Ramlal Mallah, S/o late Ramchritra mallah
14. Bhola Mallah S/o Late Ramchritra mallah
15. Chandra Shekhar Mallah, S/o Babulal Mallah
16. Santosh Mallah, s/o Babulal Mallah
17. Nitish Kumar Minor S/o Chandrashekhar Malah under the guardianship of his father Chandrashekhar Mallah.
18. Bipin Mallah, s/o Dindayal Mallah
19. Vivek Mallah, s/o Dindayal Mallah, All are resident of Mauja Cheharia, Tola Bahera, P.S- Durgawat, District - Kaimur Bhabhua.
20. Thakur Mallah, S/o Late Ghurphekan Mallah
21. Manish Kumar, S/o thakur Mallah
22. Krishna Mallah, minor son of Thakur Mallah under the guardianship of his



father Thakur Mallah

23. Most. Dhaneshwar Kuer W/f Late Ghurphekan Mallah, All are resident of Mauja Chehria, Tola Bahera, P.S- Durgawat, District - Kaimur Bhabhua.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Adv
Mr. Kumar Gaurav, Adv
For the Respondent/s : Mr. Parth Gaurav, Adv
Mr. Ashok Kumar Pandey, Adv

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 24-06-2024

Heard learned counsel for the petitioners as well as learned counsel for the respondents.

2. The instant petition has been filed under Article 227 of the constitution of India for setting aside the order dated 08.08.2018 passed by learned Sub- Judge 1st Kaimur in Title Suit No. 122 of 2012, whereby and whereunder the learned trial court allowed the petition dated 23.07.2018 filed on behalf of the intervenor/respondent nos. 20 to 23 under Order 1 Rule 10 of the Code of Civil Procedure (hereinafter as ‘the Code’).

3. The learned counsel for the petitioners submits that the petitioners are plaintiffs before the learned trial court who have filed Title Suit No. 122 of 2012 against the defendants/ respondent nos. 1 to 5 for partition of the suit land. During



pendency of the suit, the plaintiffs filed an amendment petition praying therein to delete some plots from the suit land. Further, during the pendency of the suit, intervenor/ respondents 20 to 23 filed another application under Order 1 Rule 10 of the Code but the same was withdrawn on 25.05.2018. After lapse of two months, the intervenors/respondents filed an application on 23.07.2018 under Order 1 Rule 10 of the Code making a prayer to implead them as party in the suit on the ground that they were necessary parties in the suit. After hearing the parties, the learned trial court allowed both the petitions, i.e., amendment petition and intervenor petition by common order dated 08.08.2018. The said order of impleadment has been challenged before this Court.

4. Learned counsel further submits that while allowing the intervenor's petition, the learned trial court has completely failed to appreciate the fact that the basis of claim of the intervenor was some property which was, though earlier incorporated in the suit property in the plaint, but it was subsequently deleted from the plaint by the aforementioned amendment application. As the intervenors/respondents have been claiming interest in the property which has been subsequently deleted from the plaint and not form part of the



suit property anymore, the intervenors cease to have any interest in the subject matter of the suit. Learned counsel further submits that therefore the intervenors are neither necessary party nor proper party so far as suit of the plaintiffs/petitioners is concerned. The learned trial court allowed the intervention application making the observation that only because of removal of the property, the interest of the intervenors/respondents would not come to an end. It further observed that since there is dispute over the genealogy in which the intervenors are interested party. But the learned trial court failed to appreciate that the plaintiffs/petitioners have no dispute with regard to genealogy nor any reliefs have been sought against the plaintiffs by the intervenors/respondents. For these reasons, the impugned order is not sustainable and it shows the error of jurisdiction on the part of the learned trial court and that part of the impugned order by which the prayer of intervenors/ respondents has been allowed needs to be set aside.

5. The learned counsel appearing on behalf of the intervenors/respondents submits that the intervenors are necessary party and the learned trial court has rightly allowed their prayer for implead them as party. Learned counsel further submits that earlier Title Suit No. 79 of 2002 was filed by the



intervenors as plaintiffs which was dismissed by the court of learned Sub Judge and thereafter, the intervenors filed Title Appeal No. 23 of 2009 before the court of learned District Judge and the appeal was allowed in part. Thereafter, the other side came before this Court filed second appeal vide Second Appeal No. 300 of 2011 which is still pending. Part of the suit property of Title Suit No. 122 of 2012 consisted of some of the suit property of Title Suit No. 79 of 2002 on which the intervenors' right was declared. In Title Suit No. 79 of 2002, the petitioners filed their written statement as defendants and the issue of genealogy came in question since the petitioners were held to be the son of Mandil Mallah, whereas the petitioners filed the present suit claiming themselves to be the son of Sahay Mallah. After the defendants came and filed their written statement, the amendment was incorporated by the petitioners recording the name of Mahadev Mallah in place of Sahay Mallah. The learned counsel, thus, submits that since there is dispute over genealogy in the previously instituted suit as well as the present suit, the intervenors became necessary party. Therefore, the impugned order has been passed taking into consideration these facts and there is no infirmity in the impugned order.

6. The short question is involved in this petition is that



whether in partition suit, the intervenors can claim interest even if there is no property in dispute having any relationship with the intervenors/ respondents in the suit property of the present suit. Further whether intervenors' challenge to the genealogy can be the basis for impleadment in a suit for partition, if they have otherwise, no interest in the suit. The law is well settled that plaintiff is '*dominus litis*', the master of the suit and if he fails to make any necessary party and claims relief against him, the suit will be bad for non-joinder of necessary party and would ultimately fail. The Hon'ble Supreme Court in the case of ***Sumatibai Vs. Paras Finance***, reported in ***(2007) 10 SCC 82***, has held that any person having a semblance of interest could be made a party in the case, if the court feels his presence to be necessary or proper for adjudication of dispute between the parties of the case. But in the facts of the present case mere interest of the intervenors/respondents in the genealogy of the parties having divergent views would not entitle him to intervene in the suit. Because such intervention would be quite remote and based on assumptions without any bearing on determination of real dispute of the parties. It is further pertinent to note that the suit before the learned trial court is for partition of suit property and the property of the intervenors is not the



part of the suit property. For the reasons discussed, there could be no application of Order 1 Rule 10(2) of the Code in the facts and circumstances of the case.

7. In the light of discussion made hereinbefore, I am of the view that the learned trial court erred on this point when it allowed the intervention application of the intervenors/respondents. Hence, that part of the impugned order allowing impleadment of the intervenors/respondents as party in the suit is set aside and the petition dated 23.07.2018 filed by intervenors/respondents is rejected.

8. In the result, the present petition stands allowed.

(Arun Kumar Jha, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.07.2024
Transmission Date	NA

