

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.944 of 2023

Om Prakash Singh Son of Harihar Singh, Resident of Village- Punaon, P.O.-
Kharenda, P.S. Belaon, District- Kaimur, PIN-821102.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Kaimur at Bhabhua, District-Kaimur.
2. The Anchal Adhikari, Rampur, District- Kaimur, Mahendra Singh, Son of Late Bindeshwari Singh, Resident of Village- Punaon, P.S.- Belaon, District-Kaimur.
3. Mr. Mahendra Singh, son of Late Bindeshwari Singh, resident of Punaon, P.S.- Belaon, District-Kaimur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Dr. Mayanand Jha, Sr. Advocate Mr. Giridhar Gopal Tiwary, Advocate Mr. A.K. Thakur, Advocate
For the State	:	Mr.Sajid Salim Khan, SC-25
For the Respondent 3	:	Mr. Ajay Kumar Singh, Advocate Mr. Subhash Kumar Tiwari, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 19-11-2024

I.A.No.01 of 2024

The instant interlocutory application has been filed on behalf of the petitioner for amendment in the cause title by impleading/adding the name of Mahendra Singh as party respondent no. 3 in the present petition.

2. The learned senior counsel appearing on behalf of the petitioner submits that due to inadvertence, earlier the said Mahendra Singh could not be made as a party respondent in the present civil miscellaneous petition and the details of the said

Mahendra Singh have been mentioned in paragraph 2 of the instant interlocutory application. The learned senior counsel further submits that the said Mahendra Singh is a necessary party, who is respondent in Title Appeal No. 05/2021, which has been pending in the court of learned Additional District Judge-III, Kaimur at Bhabhua.

3. Having regard to the facts and circumstances and the averments made in this interlocutory application, I.A. No. 01 of 2024 is allowed.

4. Office is directed to make necessary correction in the cause title of the instant case by adding the person named in paragraph 2 of the instant interlocutory application as respondent no.3.

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5. Heard learned senior counsel for the petitioner as well as learned counsel for the respondents.

6. The petitioner is aggrieved by the order dated 30.05.2023 passed by learned Additional District & Sessions Judge-III, Kaimur at Bhabhua in Title Appeal No. 05 of 2021 whereby and whereunder the learned Additional District Judge rejected the application of the petitioner to implead him as a party respondent.

7. Learned senior counsel appearing on behalf of the petitioner submits that the learned appellate court did not consider the fact that plaintiff has encroached upon the public land and the suit land existed in the name of Government of Bihar as 'Anabad Bihar Sarkar'. Through the said land the petitioner has been having his ingress and egress. Though, the title suit has been decided in favour of respondent no. 3, the appeal is still pending and for all purposes appeal is continuation of the lis. Thus, petitioner moved before the learned trial court during pendency of the Title Suit No. 275 of 2008 for impleadment as one of the party defendants but the same was rejected and the petitioner approached this Court by filing Civil Miscellaneous No. 759 of 2018 which was subsequently dismissed as withdrawn as the Title Suit was decreed in favour of respondent no. 3 but liberty was granted to the petitioner to pursue his remedy before the lower appellate court for his impleadment at the stage of trial. Consequently, the petitioner approached the learned Appellate Court seeking impleadment but the learned Ist Appellate Court did not appreciate the spirit of the order of this Court passed in Civil Miscellaneous No. 759 of 2018 and further failed to consider the situation under which the petitioner has to move before the

Ist Appellate Court. Learned senior counsel next submits that the impugned order is in teeth of observation of this Court passed *vide* order dated 24.08.2022 in Civil Misc. No. 759 of 2018 and is not sustainable.

8. Learned senior counsel further submits that the petitioner is a necessary party as petitioner is a co-parcenor of the respondent no. 3 who was plaintiff of Title Suit No. 275 of 2008 and has right of easement through the suit land which according to respondent no. 1 & 2 is a public land. The learned Ist Appellate Court has wrongly arrived to the conclusion that petitioner has got no interest in the suit land. The learned Ist Appellate Court has further taken into consideration an irrelevant fact that the mother and brother of the petitioner have filed Title Suit No. 614 of 2022 against defendant Mahendra Singh who is respondent no. 3 herein but the said fact has nothing to do with impleadment of the petitioner in Title Appeal No. 05 of 2021. Thus, the learned counsel submitted that the impleadment order is not sustainable and the same be set aside.

9. Learned counsel appearing on behalf of the respondent no. 3 submits that the petitioner has got no *locus standi* and is neither a necessary party nor a proper party in the present situation and the learned Appellate Court has rightly

rejected his petition. The learned counsel further submits that the suit property has been shown in the Revisionsl Survey Khatiyan in the name of 'Anabad Bihar Sarkar' and for correction of the said entry and for declaration of his right title and interest, the respondent no. 3 filed Title Suit No. 275 of 2008 and the said suit was decreed in favour of the plaintiff/respondent no. 3 and against the respondent no. 1 & 2. Subsequently, the appeal was filed by respondent no. 1 & 2 and the same is being pursued by other respondents. The only claim of the petitioner is on the ground that he is having some easementary rights over the suit land but once Title has been declared in favour of the petitioner the easementary right would cease to exist since earlier the land was shown in the name of State of Bihar in the Revisional Survey Khatiyan but the situation has now changed. Learned counsel further submits that if the petitioner is having any claim of right, title or interest in the suit property of his own he could always institute a separate suit as has been done by his mother and brother who have filed Title Suit No. 614 of 2022 and the said suit is still pending.

10. Learned counsel appearing on behalf of State respondent No. 1 & 2 also supported the contention of the learned counsel for the respondent no. 3 on the point of

opposition of impleadment of petitioner and learned counsel further submitted that there is no infirmity in the impugned order and the same needs to be affirmed.

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

12. Order 1 Rule 10(2) of the Code of Civil Procedure (in short “the Code”) reads as under:-

“(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.”

Thus, judicial discretion has been conferred upon the Courts to add or delete a party at any stage of the trial. The condition precedent is that the presence of such party may be necessary to enable the Court to effectively and completely adjudicate upon the question involved in the suit. In the facts of

the present case, the petitioner has asserted his claim on the basis of easementary rights against the suit land. However, the suit of the plaintiff/respondent no. 3 has been filed against the said respondent nos. 1 & 2 asserting his independent right, title and interest over the suit land and for correction in the survey entry which has been allowed. No relief has been sought against the petitioner. Even in the absence of the petitioner, there was no hindrance in passing an effective decree. If the petitioner is having his independent claim, he may assert such claim in an independent proceeding and not in the present petition as has been done by his mother and brother. Same goes for establishing any easementary rights. Further, the order dated 24.08.2022 passed in Civil Miscellaneous No. 759 of 2018 only gave liberty to move application for impleadment and did not confer any right of impleadment.

13. For all practical purposes, the petitioner is a stranger to the suit and he is merely an interloper and a busy body and cannot be allowed to be impleaded in the given facts and circumstances. Hon'ble Supreme Court in the case of ***Kasturi vs. Iyyamperumal and others*** reported in **(2005) 6 SCC 733** has held that a busybody or interloper with no semblance of title cannot be impleaded in a suit as it would unnecessarily

protract or obstruct the proceedings in the suit.

14. Therefore, I am of the considered opinion that the learned Ist Appellate Court judiciously exercised its discretion in the present situation and there is no error of jurisdiction and the same order does not need any interference from this Court and the impugned order dated 30.05.2023 is affirmed.

15. As a result, the present petition stands dismissed.

16. It goes without saying that petitioner is at liberty for taking recourse of appropriate proceedings for establishing his rights in accordance with law.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.11.2024
Transmission Date	NA