

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1582 of 2019

1. Suman Kumar son of Late Ramchandra Prasad resident of Village- Daulatpur, P.O. Dahabigha, P.S. Hilsa, District- Nalanda and Mohalla- Kusum Colony, Station Road, Hilsa, P.O. and P.S.- Hilsa, District- Nalanda at present residence of South Ramkrishna Nagar, Khushi Enterprises, Sampatchak, Patna, Patna- 800027.
2. Abhishek son of Suman Kumar resident of Village- Daulatpur, P.O. Dahabigha, P.S. Hilsa, District- Nalanda and Mohalla- Kusum Colony, Station Road, Hilsa, P.O. and P.S.- Hilsa, District- Nalanda at present residence of South Ramkrishna Nagar, Khushi Enterprises, Sampatchak, Patna, Patna- 800027.
3. Surbhi daughter of Suman Kumar resident of Village- Daulatpur, P.O. Dahabigha, P.S. Hilsa, District- Nalanda and Mohalla- Kusum Colony, Station Road, Hilsa, P.O. and P.S.- Hilsa, District- Nalanda at present residence of South Ramkrishna Nagar, Khushi Enterprises, Sampatchak, Patna, Patna- 800027.

... .. Petitioner/s

Versus

1. Ashok Kumar son of Late Ramchandra Prasad resident of Village- Daulatpur, P.O. Dahabigha, P.S. Hilsa, District- Nalanda and at present Mohalla- Kusum Colony, Station Road, Hilsa, P.O. and P.S.- Hilsa, District- Nalanda.
2. Veena Devi W/o Late Rajesh Kumar resident of Village- Daulatpur, P.O. Dahabigha, P.S. Hilsa, District- Nalanda and at present Mohalla- Kusum Colony, Station Road, Hilsa, P.O. and P.S.- Hilsa, District- Nalanda.
3. Sujit Kumar son of Sri Ashok Kumar resident of Village- Daulatpur, P.O. Dahabigha, P.S. Hilsa, District- Nalanda and at present Mohalla- Kusum Colony, Station Road, Hilsa, P.O. and P.S.- Hilsa, District- Nalanda.
4. Sumit Kumar son of Sri Ashok Kumar resident of Village- Daulatpur, P.O. Dahabigha, P.S. Hilsa, District- Nalanda and at present Mohalla- Kusum Colony, Station Road, Hilsa, P.O. and P.S.- Hilsa, District- Nalanda.
5. Susmita Kumari resident of Village- Daulatpur, P.O. Dahabigha, P.S. Hilsa, District- Nalanda and at present Mohalla- Kusum Colony, Station Road, Hilsa, P.O. and P.S.- Hilsa, District- Nalanda.
6. Smt. Ranju Devi wife of Sri Upendra Prasad resident of Village- Kishmiriya, P.O. Mohadipur, P.S.- Fatuha, District- Patna.
7. Smt. Punam Kumari Wife of Sri Ashok Kumar resident of Village- Daulatpur, P.O. Dahabigha, P.S. Hilsa, District- Nalanda and at present Mohalla- Kusum Colony, Station Road, Hilsa, P.O. and P.S.- Hilsa, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dilip Kumar, Adv. Ms. Kiran Kumari, Adv.
For the Respondent/s	:	Mr. Rabindra Prasad Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

Date : 21-10-2024

Heard learned counsel for the parties.

2. The petitioners are aggrieved by the order dated 02.09.2019 passed by Sub Judge III, Hilsa, Nalanda whereby and whereunder the intervenor petition dated 24.04.2019 filed by the intervenor respondent no. 7 has been allowed.

3. Briefly stated facts of the case are that the petitioners are plaintiffs and they have filed Title Partition Suit No. 75 of 2017 before the Sub Judge-I, Hilsa Nalanda for partition of their joint 1/3rd share in Schedule No. II property of the plaint apart from other reliefs. The respondent nos. 1, 3, 4,5 and 6 are defendants in the partition suit. The suit property belonged to the mother of the plaintiff no. 1, namely Shyamphul Devi, who purchased the same through two sale deeds dated 18.03.1982 and 19.05.1986. Shyamphul Devi had three sons and one daughter. During pendency of the partition suit, respondent no. 7 filed an application for her impleadment as one of the defendants. The claim of respondent no. 7 is that her father-in-law, late Ramchandra Prasad, the father of petitioner no. 1 and husband of Shyamphul Devi gifted her the suit property by way of an affidavit dated 31.07.2014. She further claimed that on the basis of the said affidavit, the land has been mutated in her name

and she has also got rent receipts in her name as well as the electricity connection. She further claimed to be in possession of suit land. This application of respondent no. 7 dated 24.04.2019 has been allowed by the learned trial court vide order dated 02.09.2019 which is under challenge in the present civil miscellaneous petition.

4. Learned counsel for the petitioners further submits that the impugned order is not sustainable and has been passed against the provisions of law. The intervenor /respondent no. 7 is neither a necessary nor a proper party in the case. She has been making claim of title upon the suit property on the basis of forged document. There could be no transfer of immovable property by way of an affidavit before the notary public. Admittedly, the suit property belonged to Shyamphul Devi, but she did not transfer the property in the name of her husband so the husband has no right to transfer the property in the name of any person. Moreover, the transfer document itself is forged and fabricated and the date of execution of the same is just seven days prior to death of Ramchandra Prasad. Moreover, there is cutting of date on all pages of the said document. Learned counsel further reiterates that there could not be transfer of an immovable property by way of unregistered document and it

runs counter to the provisions of Registration Act. Learned counsel further submits that Ramchandra Prasad has not executed any such affidavit and in any case he was not entitled to transfer the land which was the land of his wife and plaintiff no. 1 along with his brothers and sisters is the rightful claimant of the said land. Learned counsel further submits that a petition to this similar effect was earlier filed on 06.10.2018 with the same averment and the said petition was rejected *vide* order dated 19.03.2019. Once the petition with similar prayer has been rejected, the subsequent petition was not maintainable and hence, the impugned order has been passed illegally.

5. Learned counsel appearing on behalf of the respondents opposed the submission made on behalf of the petitioners. Learned counsel further submits that though petitioner no. 1 is the elder brother, he has not been taking care of his father and for this reason the father of the petitioner no. 1 and father-in-law of respondent no. 7 transferred the land in her name since she resided with the parents and took care of him. Learned counsel further submits that it was the father who purchased the land in the name of his wife and for this reason he had the right to transfer the same as per his own Will. Learned counsel further submits that since respondent no. 7 has come in

possession of the said land and hence, any decision in the title partition suit could affect her rights and for this reason she is a necessary party in this suit. Learned counsel relied on two decisions of this Court passed in the case of ***Bishwanath Singh Vs. Subodh Singh & Ors.*** reported in ***2023(4) PLJR 480*** and ***Ratan Kumar Sarawgi Vs. Vishwanath Sarawgi alias Mrlidhar Sarawgi & Ors.*** reported in ***2023(4) PLJR 828*** wherein it has been held that the powers of the court are extensive under the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure and the court at any stage could implead a party if it feels the presence of such party is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in this matter. Learned counsel further relied to a decision of the Hon'ble Supreme Court in the case of ***Vidur Impex and Traders (P) Limited & Others Vs. Tosh Apartments (P) Ltd & Ors.*** reported in ***2012 (8) SCC 384*** on the same proposition. Thus, the learned counsel submits that there is no infirmity in the impugned order and the same needs to be sustained.

6. I have considered the rival submissions of the parties and perused the record. The suit filed by the plaintiffs is for partition and the plaintiffs claim the suit property to be joint.

Admittedly, the property belongs to the mother of plaintiff no. 1 and the respondent no. 1, who died intestate and after her death the property would devolve upon her heirs/legal representatives. So claim of the respondent no.7 based on gift deed executed by husband of the deceased title holder of the suit property appears to be dubious. Further, it is a suit for partition and the plaintiffs have not claimed any relief against the respondent no. 7. The claim of the respondent no. 7, if any, could be adjudicated in an independent proceeding and cannot be in a proceeding filed for partition. The respondent no. 7 does not appear to be a necessary party in the partition suit. Her husband and children are already on record and if impleadment in such manner is allowed, there could be no end of the matter. Moreover, there is no explanation on part of the respondent no. 7 as to why her second application should be allowed when her earlier application with same prayer has already been rejected. There is no consideration of earlier application in the impugned order.

7. The Hon'ble Supreme Court in the case of ***Mumbai International Airport (P) Ltd. Vs. Regency Convention Centre and Hotels (P) Ltd. and Ors.***, reported in ***(2010) 7 SCC 417*** has held that the court has 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.

It has also been held that 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. 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. 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.

8. Similarly, in the case of *Kasturi Vs. Iyyamperumal* reported in **(2005)6 SCC 733**, Hon’ble Supreme Court held that against a necessary party there must be a right to some relief in respect of controversy involved in the proceedings.

In the present case, intervenor has asserted her right on the basis of some gift deed in her favour. The gift deed is not registered and it is merely a notorised document. If on this ground, the intervenor seeks her impleadment, such impleadment in partition suit would not be permissible for the reason that the intervenor would be making claim in her

independent capacity on the basis of her right and title over the suit property and such claims needs to be adjudicated separately from the claim of the petitioner. The intervenor has to chart her own course in a separate and independent proceeding and could not insist to be impleaded as a party in the partition suit of the plaintiff because she is neither a necessary party not a proper party in the light of the relief claimed against the defendants who are the husband and other family members of the intervenor. Since respondent no. 7 has her independent cause of action, I do not think there could be any impleadment of the respondent no. 7 as necessary or even as a proper party in the present case.

9. In the light of the discussion made hereinbefore, I do no think the impugned order dated 02.09.2019 is sustainable and hence, the same is set aside.

10. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

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