

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1794 of 2019

Harendra Pandey Son of Late Dwarika Pandey, resident of Village- Dharahara Mela, P.S. Kateya, District- Gopalganj.

... .. Petitioner/s

Versus

1. Diwakar Pandey Son of Late Vidya Nand Pandey, resident of Village- Dharhara Mela, P.S. Kateya, District- Gopalganj.
2. Gayatri Devi, daughter of Late Vidya Nand Pandey, resident of Village- Dharhara Mela, P.S. Kateya, District- Gopalganj.
3. Pasa Devi, daughter of Late Vidya Nand Pandey, resident of Village- Dharhara Mela, P.S. Kateya, District- Gopalganj.
4. Subashmani Tiwari, Son of Nagina Tiwari, resident of Village- Tiwari Chakia, P.O. Hussepur, P.S.- Bhore, District- Gopalganj.
5. Surendra Tiwari, Son of Mahesh Tiwari, resident of Village- Prasad, P.O. Gaura Bazar, P.S. Kateya, District- Gopalganj.
6. Janardan Prasad, Son of Bhagat Prasad, resident of Village and P.O.- Ramchandrapur, P.S. Thambe, District- Gopalganj.
7. Ram Bilas Pandey, Son of Late Gopal Pandey, resident of Village- Dharhara Mela, P.S. Kateya, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh, Advocate Mr. Satyendra Rai, Advocate Mr. Sumit Kumar, Advocate
For the Respondent/s	:	Mr. Vishwajeet Kumar Mishra, Advocate Mr. Akash Choudhary, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 04-03-2024

Heard learned counsel for the petitioner as well as learned counsel for the respondent nos. 1 to 6.

2. The instant petition has been filed by the petitioner under Article 227 of the Constitution of India for setting aside the order dated 31.07.2019 passed in Title Suit No. 179 of 1991



by learned Sub Judge-15, Gopalganj, whereby and whereunder the learned trial court has rejected the petition filed by the plaintiff no. 1/petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure (hereinafter 'the Code') for transposition of plaintiff no. 2 as defendant.

3. Briefly stated, the facts of the case is that the father of the petitioner namely, Dwarika Pandey and respondent no. 7 Ram Bilas Pandey filed Title Suit bearing T.S. No. 179 of 1991 for declaration of gift deed executed by one Panchanand Pandey in favour of defendant/respondent no. 1 as sham, fraudulent, inoperative and void document. After the death of his father, the petitioner was substituted as plaintiff no. 1. The said suit was decided ex-parte in favour of plaintiffs on 31.07.1996. However, at the instance of the defendants the ex-parte decree was recalled and the suit was restored on 27.06.2013. The matter proceeded and defendants filed their written statement. However, all of sudden co-plaintiff Ram Bilash Pandey, respondent no.7 herein, got himself examined as a witness and deposed in favour of defendant no. 1 particularly in paragraph 22 of the cross-examination. When the petitioner came to know about recording evidence by the co-plaintiff in favour of defendant no. 1/respondent no. 1 filed petition on 09.05.2019



under Order 1 Rule 10(2) of the Code for transposition of plaintiff Ram Bilas Pandey as defendant. Separate replies were filed by defendant no.1/respondent no. 1 and respondent no. 7 opposing the claim of the petitioner. After hearing the parties, the learned trial court passed the impugned order dated 31.07.2019.

4. Learned counsel for the petitioner submits that the impugned order is not sustainable and if the co-plaintiff/respondent no. 7 is allowed to remain as a plaintiff in the suit, he will damage the case of the plaintiff/petitioner since respondent no. 7 has come in collusion with respondent no. 1 and he has not offered any explanation for deposing in favour of defendant no. 1 in his reply and offered only lame excuses. Learned counsel further submits that the defendant no.1/respondent no. 1 has executed a sale deed on 18.06.1998 by transferring a piece of land in favour of co-plaintiff/respondent no. 7, Ram Bilas Pandey which is part and parcel of suit property. Learned counsel further submits that in these circumstances it is necessary to transpose the respondent no. 7 as defendant in the Title Suit No. 179 of 1991 and the court has discretion under Order 1 Rule 10(2) of the Code to strike off the name of the plaintiff/defendant even without application of the



parties and on such terms as may appear to the court but learned trial court committed error and has not appreciated the fact that respondent no. 7 came in collusion with respondent no. 1. In support of the contention the learned counsel relied on a decision in the case of *Vanjiappa V. Annamalai* reported in *AIR 1940 Madras 69*, wherein it has been observed that the person purchasing right to recover certain amount instituting suit to recover it by adding seller as co-plaintiff, seller claiming adversely to purchaser, the seller's name as co-plaintiff should be struck off and he should be transposed as defendant.

5. Per contra, learned counsel appearing on behalf of the respondents vehemently contended that it is not possible to transpose co-plaintiff as defendant whatever might be the contention of the plaintiff. Learned counsel further submits that the law does not permit to transpose co-plaintiff as defendant mere on asking of plaintiff. Order 1 Rule 10(2) of the Code cannot be invoked to allow transposition of co-plaintiff as defendant. In this regard learned counsel relied on a decision of Punjab and Haryana High Court in the case of *Virender Singh (deceased) through Lrs Vs. Smt. Chanderpati and others* passed in *C.R. No. 8349 of 2016*, wherein the learned Single Judge opined that Order 1 Rule 10 C.P.C. cannot be used by



plaintiff No. 1 to transpose plaintiff No. 2 as proforma defendant.

6. Having regard to the rival submission of the parties and considering the facts and circumstances of the case, it is apparent that the petitioner/plaintiff no. 1 has sought transposition of respondent no. 7/plaintiff no. 2 as defendant under Order 1 Rule 10(2) of the Code. Nowe Order 1 Rule 10(2) of 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.”

The petitioner has not prayed for deletion of co-plaintiff/respondent no. 7 on the ground that his interest has become adversarial to the as interest of plaintiff no. 1. For



transposition of co-plaintiff as defendant, the plaintiff no. 1 must show existence of certain rights against his co-plaintiff making him entitled for relief on account of infraction of such rights.

7. In these circumstances, I do not think the petition of the plaintiff/petitioner before this Court could be allowed since the petitioner/plaintiff does not seek any relief against his co-plaintiff. However, under the circumstances, the plaintiff/petitioner may approach the learned trial court for allowing the plaintiff/petitioner to cross-examine the co-plaintiff/respondent no. 7 on the ground that since the evidence of co-plaintiff is against the pleadings as plaintiff and supportive of the case of the defendant no. 1. For the aforesaid reason, the decision relied by the petitioner in the case of *Vanjiappa V. Annamalai (supra)* is of no help to the case of the petitioner.

8. Accordingly, the present petition is dismissed reserving liberty to the plaintiff/petitioner to have recourse of provisions of law for redressal of his grievance.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.03.2024
Transmission Date	NA

