

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 485 of 2017

1. Farkunda Shahin Daughter of Late Shafi Ashraf Resident of Moh- Harun Nagar, Sector - 1, P.S. - Phulwari Sharif, Dist. - Patna.
2. Asma Begum Alias Asma Khatoon Wife of Md. Irshad, Resident of Mohalla - Alamganj Agrawal- Tola, P.S. Alamganj, Dist. - Patna.
3. Md. Hashim Son of Late Md. Zafrul Haque, Resident of Moh - Braharwa, Fatch Mohamad, P.S. - Kundwa Chainpur, Dist- East Champaran at Present Shakoor Colony, Indrapuri Colony, P.S. - Shatri Nagar, Dist- Patna.
4. Sm. Arif Manaur S/o late Khaliuddin, Resident of Village Mahsa P.S.- Phulwari Sharif Dist- Patna.
5. Shabnam Kausher Wife of Afaque Manzar, Resident of Mohalla - Gaibandhi Tola Pakhajja, P.S. Phenhara, Dist. - East Champaran at Present resident of Mohalla - Shakoor Colony, Indrapuri Colony, P.S. - Shastri Nagar Dist- Patna.
6. Kaushif Manzar (Minor) S/o Afaque Manzar, Under natural guardian of his mother Shabnam Kaushar, Resident of Mohalla - Gaibandhi Tola Pakhajja, P.S. Phenhara, Dist. - East Champaran at Present resident of Mohalla - Shakoor Colony, Indrapuri Colony, P.S. - Shastri Nagar Dist- Patna.
7. Shabiha Khatoon Wife of Md. Hasim, Resident of Mohalla - Barharwa Fateh Mohimmad P.S. - Kundwa Chainpur, Dist- East Champaran of present resident of Shakoor Colony Indrapuri Colony P.S. - Shastri Nagar, Dist- Patna.
8. Abdullah Hashim (Minor) S/o Md. Hashim, Under Natural Guardianship of his mother Shabina Khatoon, Resident of Mohalla Barharwa Fateh Mohimmad P.S. Kundwa Chainpur, Dist - East Champaran at present resident of Shakoor Colony Indrapuri Colony P.S. Shastri Nagar. Dist- Patna.

... .. Petitioner/s

Versus

1. Md. Mokhtar Alam Son of Late Abdul Majid @ Md. Mattim, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
2. Md. Asfar Imam Son of Late Abdul Majid @ Md. Mattim, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
3. Md. Ali Imam Son of Late Abdul Majid @ Md. Mattim, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
4. Md. Tanbir Alam Son of late Abdul Majid @ Md. Mattim, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
5. Md. Sabbir Alam Son of Late Abdul Majid @ Md. Mattim, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
6. Md. Sabraj Alam Son of Late Abdul Majid @ Md. Mattim, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
7. Md. Akil Alam Son of Late Abdul Majid @ Md. Mattim, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.



8. Khurshida Banu D/o late Abdul Majid @ Md. Mattim, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
9. Raj Wana Khatoon D/o Late Abdul Majid @ Md. Mattim, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
10. Sabina Khatoon D/o Late Abduyl Majid @ Md. Mattim, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
11. Arju Hassan S/o Late Gulam Haidar @ Haidar Ali, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
12. Nosrat Parveen @ Sahni @ Kamaluddin W/o Kamaluddin, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
13. Faijee Hassan Son of Late Gulam Haidar @ Haidar Ali, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
14. Adil Hassan Son of Late Gulam Haidar @ Haidar Ali, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
15. Md. Hassan Son of Late Gulam Haidar @ Haidar Ali, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
16. Jahanu Alam Son of Late Syed Alam, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
17. Anwar Alam Son of Late Syed Alam, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
18. Allah Bandi D/o Late Syed Alam, Resident of Mauza Nohsa Phulwari, P.S. - Phulwari Sharif, District - Patna.
19. Dulachandra Sao Son of Sheo Govind Sao, Resident of Village - Nohsa, P.S. - Phulwari Sharif, District- Patna.
20. Rama Devi W/o Late Gulab Chandra Sao, Resident of Village - Nohsa, P.S. - Phulwari Sharif, District- Patna.
21. Arun Kumar Son of Late Gulab Chandra Sao, Resident of Village - Nohsa, P.S. - Phulwari Sharif, District- Patna.
22. Pradeep Kumar Son of Late Gulab Chandra Sao, Resident of Village - Nohsa, P.S. - Phulwari Sharif, District- Patna.
23. Pramod Kumar Son of Late Gulab Chandra Sao, Resident of Village - Nohsa, P.S. - Phulwari Sharif, District- Patna.
24. Ranjit Kumar Son of Late Gulab Chandra Sao, Resident of Village - Nohsa, P.S. - Phulwari Sharif, District- Patna.
25. Santosh Kumar Son of Late Gulab Chandra Sao, Resident of Village - Nohsa, P.S. - Phulwari Sharif, District- Patna.
26. Veena Devi D/o Late Gulabchandra Sao and Wife of Ramesh Resident of Village and P.S. Naubatpur, Dist. - Patna.
27. Nazma Khatoon W/o Md. Tazuddin, Village - Nohsa, P.S. - Phulwari, Dist- Patna.
28. Bibi Nausaba W/o Basiur Ram, Resident of Village - Nohsa, P.S. - Phulwari Sharif, Dist. - Patna.
29. Bibi Sufia W/o Saukat Hayat, Resident of Village - Nhsa, P.S. - Phulwari



Sharif, Dist. - Patna.

30. Shiv Prasad Son of Jagu Pandit, Village - Nohsa, P.s. - Phulwari Sharif, Dist. Patna.
31. Guru Prasad Son of Jagu Pandit, Village - Nohsa, P.s. - Phulwari Sharif, Dist. Patna.
32. Bibi Kudasia Talat Khatoon W/o Md. Khalid, Resident of Village Nohsa, P.S. - Phulwari Sharif, Dist- Patna.
33. Md. Khalid S/o Late Nayeemul Haque, Resident of Village - Nohsa, P.S. - Phulwari Sharif, Dist- Patna.
34. Muneshwar Rai Son of Late Bhaulal Rai Village Bochachak, P.S. - Phulwari Sharif, Dist- Patna.
35. Bhuneshwar Rail Son of Late Bhaulal Rai, Village Bochachak, P.S. - Phulwari Sharif, Dist- Patna.
36. Nazir Rai Son of Late Bhaulal Rai, Village Bochachak, P.S. - Phulwari Sharif, Dist- Patna.
37. Md. Mustafa Khan S/o Late Md. Gani Khan Nayatala Pathan toli, P.S. - Phulwari Sharif, Dist- Patna.
38. Kaushar Khan S/o Late Usuf Khan Resident of Village - Nayatola, Nahar Par, P.s. - Phulwari Sharif, Dist- Patna.
39. Kameshwar Roy Son of Rameshwari Devi, Resident of Raicolony (Nayatola) Nohsa, P.S. Phulwari Sharif, Dist - Patna.
40. Dhaneshwar Roy Son of Rameshwari Devi Resident of Raicolony (Nayatola) Nohsa, P.S. Phulwari Sharif, Dist- Patna.
41. Hamid Hassan S/o Ali Bux Resident Nalkhoun
42. Naima Gauhar W/o Md. Shaukat Resident of Royal Residency, Samanpur, Raja Bazar, Patna.
43. Ejaj Ahmad S/o Ijhar Alam, Resident of Nohsa, P.S. - Phulwari Sharif, Dist- Patna.
44. Md. Naseem S/o Late Md. Yasin of Ishapur, P.S. - Phulwari Sharif, Dist- Patna.
45. Md. Ashraf Son of Late Safirul Haque, Resident of Paharpur Police Colony, Anishabad, P.S. - Phulwari Sharif, Dist - Patna.
46. Md. Nizam Son of Late Safirul Haque, Resident of Paharpur Police Colony, Anishabad, P.S. - Phulwari Sharif, Dist - Patna.
47. Md. Israd Son of Late Safirul Haque, Resident of Paharpur Police Colony, Anishabad, P.S. - Phulwari Sharif, Dist - Patna.
48. Arfin Bano Daughter of Md. Salahuddin, Resident of Mohalla - Nohsa, P.S. - Phulwarisharif, Dist- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s

:

Mr. Anil Kumar Jha, Senior Advocate
Mr. Binoy Kumar, Advocate



For the Respondent nos 1&2 : Mr. Ajay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 30-04-2025

The instant civil miscellaneous petition has been filed for quashing the order dated 20.09.2016 passed by learned Sub Judge-VI, Patna in Title Suit No. 482 of 2006 whereby and whereunder the learned trial court rejected the petition dated 08.04.2016 filed under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure (in short "the Code") filed by the petitioners to be added as defendants in the suit.

02. Briefly stated, facts leading to the present case are that respondent nos. 1-18 are the plaintiffs who brought a Title Suit bearing No. 482 of 2006 for declaration of their title over the Schedule II property claiming themselves to be the descendants of one Abdul Gaffar. The suit property includes Plot no. 796 of Khata no. 48 having area 22 decimal. The plaintiffs claimed that this plot was recorded in Cadestral Survey record in the name of Abdul Gaffar. As the defendants started claiming their right and title over the Schedule II property, the plaintiffs were compelled to file a title suit for declaration. During the pendency of the title suit, the intervenors/petitioners filed an application seeking impleadment on the ground that defendant no. 13 and 13B had sold the suit land of Khata No. 48, Plot No.



797, Area 22 decimal through registered sale deeds dated 27.08.2003, 08.12.2003, 06.09.2004 and 06.09.2004. The vendors of the intervenors/petitioners purchased this piece of land having Khata No. 48, Plot No. 796, Area 22 decimal by way of registered sale deed dated 18.10.1967 from one Nand Kishor Rai, auction sale purchaser, for valuable consideration and the purchased land was described as Tauzi No. 15328, Khata No. 48, Plot No. 796, Area 7 katha 1 dhur. It has been claimed that due to mistake of the scribe, Plot no. has been wrongly mentioned as 797 whereas it should have been 796. This mistake continued in the sale deed of the intervenors-petitioners. The intervenors further claimed that boundary of the suit land of the intervenors/petitioners was the same as Plot no. 796. The vendors of the intervenors/petitioners were in actual physical possession and had been cultivating the disputed property without any interference from any quarters including the plaintiffs. The intervenors/ petitioners have been coming into possession of this disputed property and the plaintiffs have been trying to dispossess them. The petitioners also claimed that Plot No. 797 is of Khata No. 46 of Tauzi No. 5260 and it is a different piece of land. The learned trial court heard the parties and rejected the prayer of intervenors/petitioners for their



impleadment vide order dated 20.09.2016. The said order is under challenge before this Court.

03. Learned senior counsel appearing on behalf of the petitioners submitted that the impugned order is not sustainable and the learned trial court has passed the orders against the settled provision of law. The learned senior counsel further submitted that due to the mistake of the scribe, a wrong plot no. has been mentioned in the sale deed of the vendors and also in the sale deed of the petitioners but other description like Tauzi No., Khata No., area and boundary are the same. Further, a property could be identified by its boundary and misdescription or wrong mentioning of plot number would not come in the way of identifying the property. But this fact was not considered by the learned trial court. Learned counsel referred to a decision of the Hon'ble Supreme Court in the case of ***Sheodhyan Singh And Others vs Musammat Santchara Kuer And Others*** reported in ***AIR 1963 SC 1879*** wherein the Hon'ble supreme Court referred to the decision of the Privy Council wherein it was observed that a case of misdescription could be treated as a mere irregularity where there is no doubt as to the identity of the property and if identity of the property is well established, misdescription does not affect the identity of the property sold



and thus, Hon'ble Supreme court held that the mistake in plot number must be treated as mere misdescription which does not affect the identity of the property sold. Learned senior counsel further submitted that moreover plot number 797 is part of Khata no. 46 and this is the admitted position in the plaint of the plaintiffs. This fact is also clear from making the vendors of the petitioners, namely Muneshwar Rai and Nazir Rai, as parties/defendants. They were made parties only on the ground that they were admittedly the title holder of Plot No. 796 but they have nothing to do with the Plot No. 797. Thus, the petitioners are *bona fide* purchasers from Muneshwar Rai and Nazir Rai of Plot No. 796 and are in exclusive possession of the same. The learned trial court has failed to exercise its jurisdiction and has not considered the real dispute in issue and rejected the petition of the petitioner on misconceived grounds. Prior to the sale of the disputed property to the petitioners, Muneshwar Rai and Nazir Rai partitioned their property in half and got their names recorded in Government Sarista of the State of Bihar and *jamabandi* was created in their names and mutation was also done in the names of the petitioners. The learned senior counsel reiterated that Plot No. 797 comes under Khata No. 46 having area 11 decimal with different boundary and neither the



plaintiffs not the intervenors/petitioners have any concern with the said plot of land. Learned senior counsel further submitted that the vendors of the petitioners have already sold the suit land and they have no interest in the suit property and might not properly contest the suit. This makes the petitioners necessary parties for proper disposal of the suit. Learned senior counsel thus submitted that the petitioners are necessary parties having right, title and possession over one of the plots of the Schedule II property and their interest would be jeopardized if they are not made parties and it would also result in multiplicity of litigation. Thus, it has been submitted by the learned senior counsel that the impugned order is not sustainable and the same be set aside and the application of the petitioners for impleadment be allowed.

04. Learned counsel appearing on behalf of the respondent nos. 1 and 2 submitted that there is no infirmity in the impugned order and the same has been passed after consideration of facts and circumstances of the case. Learned counsel appearing on behalf of the respondents at the outset submitted that admittedly the vendors of the petitioners purchased the Plot No. 797 and transferred the same to the petitioners. The plot was originally purchased in 1967 and if



there was any misdescription of Plot No., neither the vendors of the petitioners nor the petitioners ever took any steps for correction of the said Plot No. Muneshwar Rai and Nazir Rai the vendors of the petitioners never claimed that they have purchased Plot No. 796. Therefore, the vendors of the petitioners were not in any manner connected with the original owner of Plot No. 796. The learned counsel further submitted that boundaries given by the vendors in their sale deed of year 1967 are not the same for the Plot No. 796 existing as on date. Learned counsel further submitted that, moreover, if correction in any registered document is required, the remedy for the same could be availed under the provisions of Specific Relief Act and the petitioners cannot seek their impleadment in the suit filed by the plaintiffs/respondents for declaration of their independent title and right over the suit land. Therefore, the petitioners are neither necessary nor proper parties and their application for impleadment has rightly been rejected.

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

06. The learned trial court rejected the claim of the petitioners for impleadment on the ground that disputed land in this case is Plot No. 796 and not Plot No. 797 and as the



petitioners have purchased Plot No. 797, they were not necessary parties as it was a matter of correction of the deed for which the Court was not competent. Before proceeding further it would be beneficial to refer to the provision as well as certain decisions of the Hon'ble Supreme Court.

07. 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.”

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.

09. Further, the Hon'ble Supreme Court in the case of ***Sumtibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)***, reported in ***(2007) 10 SCC 82***, has held that a party having a semblance of interest in the suit property could be impleaded as a party in the suit.

10. The Hon'ble Supreme Court in the case of ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.***, reported in ***(2010) 7 SCC 417*** has discussed the law relating to impleadment of the parties. It will be beneficial to quote paragraphs 13, 14, 15, 22, 25 & 27 of the said judgment:-

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for



impleadment of proper or necessary parties.

The said sub-rule is extracted below:

“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.”

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to



add as a party, any person who is found to be a necessary party or proper party.

15. 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 at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. 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, though he need not be a person in favour of or against whom the decree is to be made. 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. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The



discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.

25. In other words, the court has the 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.

27. On a careful examination of the facts of this case, we find that the appellant is neither a necessary party nor a proper party. As noticed above, the appellant is neither a purchaser nor the lessee of the suit property and has no right, title or interest therein. The first respondent-plaintiff in the suit has not sought any relief against the



appellant. The presence of the appellant is not necessary for passing an effective decree in the suit for specific performance. Nor is its presence necessary for complete and effective adjudication of the matters in issue in the suit for specific performance filed by the first respondent-plaintiff against AAI. A person who expects to get a lease from the defendant in a suit for specific performance in the event of the suit being dismissed, cannot be said to be a person having some semblance of title in the property in dispute”.

11. Coming to the facts of the instant case, it is not in dispute that vendors of the petitioners were made parties as defendant no. 13 and 13B. If the vendors of the petitioners have no interest in Plot No. 796 or the plaintiffs have not been claiming any relief against them considering the case of the plaintiffs that the vendors were purchasers of Plot No. 797, then why the vendors were made parties? If the vendors have no interest in any of the suit plots of Schedule II, the plaintiffs would not have made them parties as defendants. Further, if Plot No. 797 is of Khata No. 46 and not of 48 and the sale deeds of vendors of the petitioners and the petitioners themselves mention the same Tauzi No., Khata No. and boundary corresponding to Plot No. 796, the simple inference is that there might be a wrong mentioning of plot number and the



plaintiffs were aware of this fact and for this reason they made the vendors of the petitioners parties. Whether there was misdescription in the plot is yet to be established but at this stage, merely on this ground that disputed plot number does not match with the plot number of the petitioners, the rejection of the claim of the petitioners for impleadment is not proper. It is the settled provision of law that a land would be identified by its boundary and if its identity is established and the same is certain, mere misdescription would not come in the way of asserting rights by its title holder. It has also been submitted by the learned senior counsel for the petitioners that the vendors of the petitioners are not contesting and as the petitioners claim through their vendors, their claim should have been considered by the learned trial court even in this perspective.

12. Therefore, in the light of discussion made hereinbefore and considering the fact that boundary of plot no. in the sale deed of the petitioners matches with Plot No. 796 and as the petitioners have been able to show their interest, their claim deserves consideration and their impleadment would enable the Court effectually and completely to decide the question in controversy between the parties as if there were no misdescription of the suit property in their sale deed.



13. Hence, I am of the considered opinion that the impugned order dated 20.09.2016 could not be sustained and same is set aside and the application dated 08.04.2016 is allowed.

14. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	AFR
CAV DATE	13.02.2025
Uploading Date	30.04.2025
Transmission Date	N/A

