

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.929 of 2017

1. Shakila Khatoon Wife of Md. Salimuddin.
2. Md. Salimuddin Son of Late Abdul Karim.
3. Md. Nahimuddin
4. Md. Wasimuddin, Both are minor sons of Md. Salimuddin. Minors are under the guardianship of their father Md. Salimu. All resident of Village-Chakand Karbala, P.S.- Chandauti, District- Gaya.

... .. Petitioners

Versus

1. Smt. Nirmala Devi Wife of Sri Ram Pravesh Sharma.
2. Sri Shushil Kumar Son of Sri Ramratan Singh. Both are Resident of Village-Chakand Garh, P.S.- Chandauti, District- Gaya.
3. Ram Rati Devi Wife of Late Sharda Nand Singh Resident of Village-Chakand Garh, P.S.- Chandauti, District- Gaya.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Sumant Kumar Singh, Advocate Mr. Rajesh Kumar Sharma, Advocate
For the Res. Nos. 1& 2	:	Mr. Sanjay Kumar, Advocate
For the Res. No. 3	:	Mr. Jay Prakash Singh, Advocate Mr. Sanjeev Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 30-04-2025

The present Petition has been filed by the petitioners for quashing the order dated 17.04.2017 passed by the learned Sub Judge-I, Gaya in Title Suit No. 746 of 2015 whereby and whereunder the application filed under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') by the respondent no. 3 has been allowed and she was directed to be impleaded as defendant no. 3 in the suit.

02. Briefly stated, the facts of the case are that the



petitioners have filed Title Suit No. 746 of 2015 seeking declaration of their title over the suit land. The case of the petitioner is that one Ram Pyari Devi, wife of Shiv Nandan Singh was the recorded *raiyat* of the land in question along with other lands. She had two daughters, namely Ramrati Devi and Chandeshwari Devi. Ramrati Devi was married with Suryadeo Singh @ Surajdeo Sharma. Out of this wedlock, they had a son, namely Upendra Sharam. Rampyari Devi gifted the suit property to her daughter Chandeshwari Devi and her grandson Upendra Sharma on 05.08.1981. Ramrati Devi died prior to 05.08.1981 and for this reason, Rampyari Devi executed the registered deed of gift in favour of her daughter Chandeshwari Devi and her grandson Upendra Sharma. Subsequently, Upendra Sharma also died. Suryadeo Singh became the owner of the entire suit land on survivorship. This person, Suryadeo Singh, executed four sale deeds dated 15.12.2011, 19.05.2012, 09.08.2012 and 28.05.2013 in favour of the plaintiffs/petitioners for an area of 17 ½ decimals. After mutation, the land receipts were granted in the name of plaintiffs who came into effective control and occupation of the suit land. When the defendant nos. 1 and 2 started disturbing the possession of the plaintiffs over the suit land, the plaintiffs filed the present title suit seeking



declaration of their title on the suit land. On the other hand, defendant/respondent nos. 1 and 2 appeared and filed their written statement in the title suit denying the title of the petitioners claiming that though Upendra Sharma died, her mother Ramrati Devi was alive and she is still alive and it was Ramrati Devi who succeeded to the interest and properties of her son and not her husband. Ramrati Devi transferred the land in question through registered sale deed dated 30.12.2014 in favour of defendant/respondent nos. 1 and 2 and they have come in possession of the suit land. During the pendency of the suit, respondent no. 3, Ramrati Devi filed an application seeking impleadment before the learned trial court. Ramrati Devi submitted before the learned trial court that she and her sister Chandeshwari Devi inherited and succeeded to the properties left by their parents and subsequently, both the sisters partitioned the property and came into peaceful possession of the same. Chandeshwari Devi is in possession over her share of the property whereas Ramrati Devi came in possession of the share allotted to her. Respondent no. 3 further submitted that she had sold most of her land through registered sale deed dated 30.12.2014 to the defendant nos. 1 and 2 and they are in possession over their purchased land. Respondent no. 3 mostly



resides at Ludhiyana (Punjab) with her second husband as she had solemnized second marriage after death of her husband Surajdeo Sharma. Surajdeo Sharma was sent to jail on charges of murder of their son Upendra Sharma. The respondent no. 3 came to know about the claim of the plaintiffs/petitioners with regard to execution of four sale deeds by Surajdeo Sharma claiming respondent no. 3 had died before 1981 and coming to know about this wrong averment made in the plaint, she filed application seeking impleadment in the suit as one of the defendants. The learned trial court after hearing the parties, allowed the application filed by the intervenor/respondent no. 3, Ramrati Devi vide order dated 17.04.2017 and the said order is under challenge before this Court.

03. Learned counsel for the petitioners, at the outset, submitted that the lady claiming herself to be Ramrati Devi is a fictitious character and the defendant/respondent nos. 1 and 2 have put her in order to grab the land of the petitioners. The defendant/respondent nos. 1 and 2 planted a fake woman committing fraud, wanted to grab the suit land of the petitioners and the petitioners lodged Chandauti P.S. Case No. 114 of 2016 under Sections 419, 420, 467, 468, 471, 379, 120(B) of the Indian Penal Code on 09.04.2016. As the matter was not



inquired properly, the plaintiffs/petitioners approached this Court by filing Cr.W.J.C. No. 460 of 2017 and this Court directed the Senior Superintendent of Police, Gaya to review the matter at his own level. This Court gave liberty to the petitioners to file appropriate application in the learned trial court, requesting the court to pass appropriate order to monitor the investigation and ensure submission of police report at the earliest. During investigation, I.O. produced death certificate of Ramrati Devi which was sent to the Registration Office, Birth/Death, Gaya for verification, but the same could not be verified due to lack of the relevant register. I.O. also recorded that despite repeated request, defendant nos. 1 and 2 did not make any endeavour for appearance of Ramrati Devi. Learned counsel, thus, submitted that a fictitious lady has been planted by the defendant/respondent nos. 1 and 2 as she appeared before the learned Civil Court but she has not appeared before the Criminal Court. Learned counsel further submitted that even otherwise, Ramrati Devi has no interest left in the suit property as she herself admitted in Para-4 of her intervenor application as well as in her written statement that she has already sold the suit land to the defendant nos. 1 and 2. She has specifically pleaded in paragraph-16 of her written statement that in due course she



had sold her land measuring 32.36 decimal and 96 ¼ decimal to the defendant nos. 1 and 2 through registered sale deeds dated 30.12.2014 and the purchasers are in possession of their purchased land. This fact has also been admitted by the purchasers, defendant/respondent nos. 1 and 2 in paragraph-12 of their written statement. Learned counsel further submitted that Ramrati Devi was already dead, her mother gifted the property to her grandson and to her another daughter. Subsequently, a partition took place between the Chandeshwari Devi and Suryadeo Singh @ Surajdeo Sharma as Upendra Sharma was already dead. This partition took place with the intervention of *Panchas* on 06.02.2012 and it was duly signed by *Panchas* as well as *Sarpanch* of the Village Panchayat. Thereafter, out of necessity, Surajdeo Sharma sold the land to the plaintiffs through four registered sale deeds and they got their names mutated in the record and started paying rent to the State of Bihar. For this reason, as Ramrati Devi is a fake woman, sale deeds executed by her is *void ab initio* as she has got no right or interest to get herself impleaded in the title suit filed by the plaintiffs/petitioners. This respondent in collusion with defendant/respondent nos. 1 and 2 who wanted to grab the land of the plaintiffs/petitioners and she has got no interest



in the property and her impleadment is not required for just and proper decision of the suit when her vendees are already on record and contesting the suit. Thus, the learned counsel submitted that the impugned order could not be sustained and the same be set aside.

04. Learned counsel appearing on behalf of respondent nos. 1 and 2 vehemently contended that there is no infirmity in the impugned order and the learned trial court rightly ordered for impleadment of respondent no. 3 in the suit. Admitting the genealogy, learned counsel submitted that after death of their parents, Ramrati Devi and Chandeshwari Devi partitioned the property and sold some of their lands. In furtherance thereto, Ramrati Devi sold some of her lands in favour of Nirmala Devi-respondent no.1 and Sushil Kumar-respondent no. 2 by two registered sale deeds, both dated 30.12.2014. As some dispute arose with regard to partition of the landed property, then in presence of local *Panch*, joint family property was divided on 09.09.2015 by way of *Panchanama* signed by the local *Sarpanch* of the Gram Panchayat and other *Panchas*. Learned counsel further submitted that coming to know about petitioners having purchased her share, respondent no. 3 filed Complaint Case No.



647 of 2016 before the learned CJM, Gaya in which cognizance was taken against five accused persons. The proceeding under Sections 144 Cr.P.C. was also initiated and vide order dated 17.10.2015, learned Sub Divisional Magistrate closed the proceeding by holding that the issue of title between the parties could be decided by a court having competent jurisdiction. Learned counsel further submitted that plaintiff/petitioners claimed that Ramrati Devi is a fictitious lady but she has appeared before the learned trial court through her counsel and refuted the stand of the petitioners. She had also filed a petition on 05.05.2016 before SSP Gaya for protection of her life and properties. Learned counsel further submitted that the learned trial court did not commit any error. The plaintiffs/petitioners are claiming title over the suit property on which the respondent no. 3 makes her claim and has executed sale deeds in favour of defendant/respondent nos. 1 and 2. Respondent no. 3 is the rightful owner of the suit property and has sold some part of her holding to the defendant nos. 1 and 2. Therefore, for determination of controversy between the parties, her presence is necessary. The learned trial court took into consideration this fact and also the intervenor application of the respondent no. 3 and the same is in accordance with the provisions of Order 1



Rule 10(2) of the Code. The presence of respondent no. 3 is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The learned trial court is competent to verify the claim of the plaintiffs/petitioners about respondent no. 3 being a fictitious lady and only on this ground, the claim of the respondent no. 3 could not be declined. Learned counsel also submitted that there remains some other property of the intervenor/defendant no. 3/respondent no. 3 and it is not that she has disposed of all her properties and if her impleadment is not allowed, then her right and title over rest of the properties would adversely be effected. Thus, the learned counsel submitted that the impugned order does not need any interference of this Court.

05. I have given my thoughtful consideration to the rival submission of the parties and perused the record. Order 1 Rule 10(2) of the Code reads as under: -

“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.”

06. Obviously, the court has got ample power to add or strike out the name of any person at any stage of the proceeding. It is entirely at the discretion of the court and the said discretion is to be exercised by the court for effectually and completely to adjudicate upon and settle all the questions involved in the suit. 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*** in Para-22 has held as under:-

“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.”

(Underline supplied)

07. Furthermore, 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. Also, in the case of ***Udit Narain Singh Malpaharia v. Addl. Member Board of Revenue***, reported in ***AIR 1963 SC 786***, the Hon’ble Supreme Court held that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an



effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

08. The court can order for impleadment even against the wishes of the plaintiff if a party has a direct and legal interest in the subject matter of the property. With regard to said proposition, reliance could be placed on the decisions of Hon'ble Supreme Court rendered in the case(s) of *Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.*, reported in *(2012) 8 SCC 384* and *Ramesh Hiranchand Kundanmal v. Municipal Corporation of Greater Bombay*, reported in *(1992) 2 SCC 524*.

09. Coming to the facts of the present case. There could be no denial of the right and interest of Ramrati Devi in the suit property whether it devolved upon her through her deceased son or devolution by way of survivorship after death of her mother. The main thrust of argument and challenge to impleadment of respondent no. 3 is on the ground that she is not the real Ramrati Devi and she is a fictitious lady who has been planted by defendant/respondent nos. 1 and 2. It appears this issue is already before the authorities and the court. Merely on the ground that the plaintiffs/petitioners challenged the status of



respondent no. 3, her impleadment could not be denied in a suit where Ramrati Devi is stated to have substantial interest.

10. So far as claim of the plaintiffs/petitioners about respondent no. 3 alienating most of her land is concerned, even then being the vendor of the defendant/respondent nos. 1 and 2, her presence may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

11. In the light of aforesaid discussion, I do not find any error of jurisdiction in passing the impugned order by the learned trial court. Hence, the impugned order dated 17.04.2017 passed by the learned Sub Judge-I, Gaya in Title Suit No. 746 of 2015, is hereby affirmed.

12. Accordingly, the present Civil Misc. Petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	12.02.2025
Uploading Date	30.04.2025
Transmission Date	NA

