

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1126 of 2017**

1. Anil Kumar Pathak Son of Late Jai Ram Pathak.
2. Ankit Kumar Pathak, Son of Anil Kumar Pathak.
3. Sushant Kumar Pathak, Son of Late Abhay Kumar Pathak. All are resident of Mauza- Kalyanpur, P.O. P.S. District- Jamui.

... .. Petitioner/s

Versus

1. Umesh Bhagat Son of Late Kamleshwary Bhagat, resident of Mouza- Kalyanpur, P.S. District- Jamui.
2. Geeta Devi, Wife of Late Ramjee Prasad Bhagat, Daughter of Late Kapildeo Bhagat, resident of Mouza- Kalyanpur, Tola- Shivandih, P.O. P.S.- Jamui.
3. Satyanaryan Bhagat, Son of Late Shiv Prasad Bhagat.
4. Dharmendra Kumar.
5. Ajay Kumar, Both are sons of Satynarayan Bhagat. All are resident of Mouza- Kalyanpur, Tola- Mahrajganj, P.O. P.S.- Jamui, District- Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Sanjay Kumar Mishra, Advocate
Mr. Ashok Kumar, Advocate
For Respondent Nos. 1 & 2: Mr. Prabhat Ranjan Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date : 28-02-2025

The present petition has been filed for setting aside the order dated 28.04.2017 passed by learned Munsif, Jamui in Title Suit No. 95 of 2016, whereby and whereunder the petition filed under Order 1 Rule 10(2) of the Code of Civil Procedure



(in short 'the Code') by the intervenors has been allowed.

2. Briefly stated, the facts leading to the institution of the present civil miscellaneous petition are that the petitioners are plaintiffs in Title Suit No. 95 of 2016. The plaintiffs claimed Khesra Nos. 219 and 220 of Khata No. 36 are the land of the plaintiffs. 2 decimal of land of Khesra No. 220 came in possession of the predecessor of the plaintiffs through sale certificate issued in auction proceeding in Execution Case No. 35 of 1939 in the name of Rameshwar Pathak, who was grandfather of plaintiff/petitioner no. 1 and great grandfather of plaintiffs/petitioner nos. 2 and 3. After the death of Rameshwar Pathak, property belonging to him was partitioned between his two sons, namely Jairam Pathak and Bishunath Pathak, in Partition Suit No. 37 of 1979 and accordingly, Khesra No. 220 (entire) along with other khesras came in possession of Jairam Pathak, the father of petitioner no. 1 and grandfather of petitioner nos. 2 and 3, respectively. The father of petitioner no. 1 in his life time merged the land of Khesra Nos. 219 and 220 and constructed house/shops over the aforesaid land. Four shops were constructed upon Khesra No. 220 and their direction was from East to West and have been let out on rent to different tenants. There is a boundary wall of length 38 feet and height 15



feet and from north side of Khesra No. 220 which acts a boundary mark between Khesra Nos. 220 and 221. The defendant no. 1/respondent no. 3 is in possession of Khesra No. 221. The defendant no. 1/respondent no. 3 with an intention to grab the land of the petitioners, constructed a concrete pillar by cutting the wall of the petitioners situated on Khesra No. 220. Coming to know about the act of respondent no. 3, the petitioners moved before learned Sub-divisional Magistrate, Jamui for initiation of a proceeding under Section 144 of the Code of Criminal Procedure (in short 'Cr.P.C.) but the same was dropped vide order dated 14.06.2016 passed in Case No. 1035M of 2016 with observation that nature of dispute is about the demarcation of the land and as such it could be decided only by the competent court. The defendant no. 1/respondent no. 3 again tried to disturb the possession of the petitioners by constructing the house by merging part of the land of the petitioners and the petitioners again took shelter of law by filing a petition under Section 144 Cr.P.C. During the proceeding under Section 144 Cr.P.C., a petition was filed by intervenor Umesh Bhagat, respondent no. 1 of the present case, who prayed to make him a party in the proceeding in Case No. 1975M of 2016 which has been disposed of vide order dated 09.11.2016, whereby the



learned Executive Magistrate rejected the intervenor petition of respondent Umesh Bhagat and the matter was dropped observing that the dispute between the parties is for demarcation of the land and the same could be decided by a competent court. Thereafter, the petitioners filed Title Suit No. 95 of 2016 making defendant nos. 1, 2 and 3 who are respondent nos. 3, 4 & 5 in the present petition as party since dispute was between the petitioners and respondent 2nd set. During pendency of the suit and after appearance of all the 3 defendants, respondent nos. 1 and 2 filed a petition under Order 1 Rule 10(2) of the Code for impleading them as intervenors/defendants on the ground that the land is of their ancestor by way of a Hukumnama dated 26.07.1941 issued in the name of one Aganu Bhagat. The plaintiffs/petitioners filed their objection against the intervenor petition and filed a rejoinder on 20.12.2016. The learned trial court, after hearing the parties allowed the petition filed by the intervenors. The said order is under challenge before this Court.

3. Learned senior counsel Mr. Ganpati Trivedi, appearing on behalf of the petitioners, submitted that the learned trial court has wrongly allowed the petition of the intervenors by ignoring the law. The learned trial court has not considered that according to law no person could be added against the wishes of



the plaintiffs and the plaintiffs are masters of their own suit and no person can be allowed to intervene against the wish of the plaintiffs. The learned trial court has not considered that how the intervenors could be permitted to participate in the dispute between the others which is confined only to erection of a wall. The intervenors/respondent nos. 1 and 2 are neither necessary party in dispute between the plaintiffs and the original defendants nor proper party. Learned senior counsel further submitted that the whole claim of the intervenors is based on a Hukumnama dated 26.07.1941 issued by the then landlord Babu Keshav Prasad Goyanka in favour of one Aganu Bhagat but prior to that the ancestor of the petitioners purchased the suit land in auction in Execution Case No. 35 of 1939 in which Aganu Bhagat, the ancestor of the intervenors was a party. Learned senior counsel further submitted that the learned trial court has recorded a completely erroneous finding that the intervenors filed Register-II in support of their claim. It is an error of record and no Register-II has been file before the learned trial court. Learned senior counsel further submitted that since respondent nos. 1 and 2 are having no concern with the land in question and they are in collusion with other defendants, their impleadment in the suit is unwarranted, illegal and against



the law. Learned senior counsel referred to a decision of Hon'ble Supreme Court in the case *Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and others* with *Bhagwati Developers Private Limited Vs. Tosh Apartments Private Limited and others*, reported in *(2012) 8 SCC 384* to stress the point that the intervenors are neither necessary nor proper parties and their conduct and collusion with other defendants make them unfit for impleadment.

4. However, the learned counsel appearing on behalf of respondent nos. 1 and 2 submitted that there is no infirmity in the impugned order and the same needs to be affirmed. Learned counsel for the respondents submitted that the answering respondents have based their claim on a valid document, i.e., copy of return (Register-I) submitted by Ex-landlord/Khaira Estate. In this return, the name of ancestor of the answering respondents namely, Aganu Bhagat has been clearly mentioned as the Ex-landlord submitted return in the name of ancestor of respondent nos. 1 and 2, which proves that ancestor of respondent nos. 1 and 2 was owner of the suit land at the time of vesting of Zamindari. For this reason under no circumstance the suit land was the subject matter of any auction sale. Learned



counsel further submitted that the sale certificate is a fraudulent document produced by the petitioners. It is a forged and fabricated document. From the sale certificate it appears that the land of village Mauza Maharajganj @ Shivganj, Pargana Gidhaur, P.S. & P.S. - Jamui has been referred but the suit land falls under Mauza Kalyanpur, adjacent Mauza of Maharajganj. The alias name of Shivganj is completely false. Mauza Maharajganj has no alias name like Shivganj. Even the thana number mentioned in the sale certificate is wrong. The thana number of Mauza Kalyanpur is 40 whereas sale certificate has been mentioned as Thana No. 39. Moreover, the sale certificate refers to 5 decimal of land whereas in the plaint and also in the present writ petition, the plaintiffs/petitioners are claiming that they have purchased 2 decimal land. It shows the petitioners are not sure as to which land they have been claiming through the sale certificate. Moreover, there is no record of Execution Case No. 35 of 1939. Further, the story of auction sale in Execution Case No. 35 of 1939 is totally false and concocted. There is no such record available in the Civil Court. Learned counsel stressed the fact that Copying Department of Civil Court, Jamui had clearly reported that there is no record of Execution Case No. 35 of 1939. If there was no execution proceeding then how



the auction sale could have taken place. Learned counsel further submitted that the petitioners have been trying to set up their claim over the suit land with the help of defendants and no creation of jamabandi for a long time could not be used to deny the title of a land owner. The ancestor of respondent nos. 1 and 2 did not record their name in the register of the State though the return of Ex-landlord was in favour of the ancestor of respondent nos. 1 and 2. Merely on the ground that jamabandi was not created in the name of the respondents 1 and 2, the petitioners cannot take advantage of this fact and on that basis cannot deny the title of the respondent nos. 1 and 2. Learned counsel further submitted that the petitioners claimed that the sale certificate was issued by the Civil Court but it has been issued by the office of Sub-Registrar, that too on 16.12.2016 and there is no explanation from the petitioners as to how Civil Court did not provide them the copy of sale certificate. Learned counsel further submitted that the sale certificate on which the petitioners have placed their reliance refers to 5 decimal of land where in the entire pleading, petitioners have pleaded that they have purchased only 2 decimal in auction sale. If pleading of petitioners is correct, there is no occasion for them to rely on sale certificate of 5 decimal land. Learned counsel reiterated that



the Ex-landlord submitted return of the said land appertaining to Khesra No. 220, Mauza Kalyanpur, area 2 decimal in the name of their ancestor and as such there would have been no occasion of auction sale of the same land and as such the claim of the petitioners is totally false and concocted and have no legal force and therefore, they are not entitled to any relief.

5. Learned senior counsel for the petitioners in reply submitted that perusal of sale certificate would make it clear that Rameshwar Pathak had purchased Plot No. 220 under Khata No. 36, area 5 decimal along with house in execution of mortgage decree in Suit No. 05 of 1935 on 31.07.1939 for consideration of Rs.1923 and 14 Aana which was being executed against Shivdeni Bhagat, Son of Ganga Bishun Bhagat and Beni Bhagat, Son of Agnu Bhagat and Janhavi Bhagat and Dudhwa Bhagat minor son of Beni Bhagat, resident of Maharajganj alias Shivganj, Pargana Gidhour, P.O. and P.S. - Jamui, District – Munger. Learned senior counsel further submitted that the sale certificate was issued in favour of Rameshwar Pathak under Order 21 Rule 94 of the Code. After confirmation of sale, copy thereof was forwarded to Sub-Registrar, Jamui for being filed in Book-I as required under Section 61 of Registration Act, 1908 for being copied into the



margin of register book because registration of such documents become complete thereafter. From perusal of certified copy of the sale certificate it appears that the said sale certificate was copied in Book-I at page no. 227-228 in the year 1940 and therefore, the question of challenging the genuineness of the certified copy of sale certificate does not arise. Learned senior counsel further submitted that there is presumption of correctness attached to registered document and the same can be challenged before the competent Civil Court in separate proceeding. Learned senior counsel further submitted that there is no confusion over the alias name of Maharajganj because Shivganj is alias name of Maharajganj as in a copy of sale deed executed in the year 1970 by one Bishwanath Prasad Bhagat, Son of Ramdahin Bhagat, address has been mentioned as resident of Mauza – Shivganj alias Maharajganj. Learned senior counsel next submitted that even if any old order or documents are not available or not provided by the learned Civil Court, the same is not surprising since as per rule after a certain period there is provision for destroying the documents/record, which is apparent from the certified copy of application/chirkut filed to obtain the certified copy of order dated 24.11.1939 passed in Execution Case No. 35 of 1939. The same has been rejected



with report that the case record has been destroyed in accordance with law. That means case was in existence but record of the same has been destroyed. Learned senior counsel further submitted that respondent nos. 1 and 2 have produced a copy of return but the same is completely forged and fabricated document. Learned senior counsel further submitted that the claim of respondents 1st set is completely false that Agnu Bhagat had taken the suit land on settlement through Hukumnama from Keshav Prasad Goyanka. Moreover, Agnu Bhagat had already lost his right, title and interest in the land in question. Therefore, respondent nos. 1 and 2 would not have any locus to get impleaded in the suit, more so when no relief has been sought against them.

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

7. 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.”

8. 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 pertinent 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”.

9. Further, 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.

10. 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. Here a number of persons had purchased the property and it was an admitted fact.

11. Therefore, at any stage, if the court is of the view that a person is necessary or proper party, it could order for his impleadment if it is found that presence of such person is necessary to effectually and completely decide the matter. Now the petitioners have brought their suit claiming title and possession on the basis of sale certificate of Execution Case No. 35 of 1939 against the defendants as the petitioners claim that the defendants have been making encroachment upon their land



and the suit has been filed for declaration of their right, confirmation of possession and also for recovery of possession if they are dispossessed during the pendency of the suit. It is also evident that the petitioners have not sought any relief against the intervenors/respondents 1 and 2. Whatever might be the claim of the intervenors over the suit property, the same has not been touched by the plaintiffs/petitioners. The plaintiffs have set up their claim based on a certificate of sale whereas the intervenors want to get impleaded in the matter on the basis of some Hukumnama. It is also apparent that the petitioners have not been in possession of the suit land. In the light of these facts, the intervenors might have their independent claim over the suit property and can agitate the same in an independent proceeding and not in a proceeding instituted by the plaintiffs/petitioners. Being masters of their *lis*, the petitioners cannot be made to contest or fight against an opponent who, in the eyes of plaintiffs, has no concern with the suit land and has not been causing any disturbance to the plaintiffs/petitioners. So far as the challenge to the genuineness of the documents of the plaintiffs by the respondents 1 and 2 is concerned, the same is quite surprising as intervenors could not seek impleadment claiming it to be a forged document as it is for the plaintiffs to



prove the authenticity of the sale certificate before the learned trial court and the intervenors cannot challenge the right of plaintiffs to bring the suit on the basis of such document at this stage. At the same time, the claim of the intervenors for their impleadment is allowed, there would be no stopping for any person to seek impleadment in the suits of other because no relief has been sought against the intervenors and an effective decree can be passed even in absence of the intervenors. Similarly it does not appear that the presence of the intervenors is required to enable the court to completely, effectively and properly adjudicate upon all matters and issues before it. Reference could be made to Para 41 of the ***Vidur Impex and Traders Private Limited & Ors.*** (*supra*) which reads as under:-

“41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to



be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment”.

12. Further, in ***Mumbai International Airport (P) Ltd.*** (*supra*), the Hon’ble Supreme Court held that under Order 1 Rule 10(2) the court has the discretion either to allow or reject



the application of person claiming to be a necessary party or proper party. It is the judicial discretion of the court to strike out and add party at any stage of the proceeding. If a person seeking impleadment is not necessary or proper party, the court cannot direct for impleadment of such party. Moreover, as already discussed, the intervenors have set up their independent claim over the suit property and cannot be allowed to intervene in the matter on the basis of such claim. However, it is open for the intervenors to chart independent course and institute their own suit for asserting their rights.

13. In the light of discussion made hereinbefore, I am of the considered opinion that the intervenors cannot be allowed to get impleaded in Title Suit No. 95 of 2016 and the impugned order has been passed by the learned trial court exceeding its jurisdiction. Hence, the impugned order dated 28.04.2017 is set aside and accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	21.01.2025
Uploading Date	28.02.2025
Transmission Date	NA

