

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.158 of 2019

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Gopal Prasad Azad S/o- Late Mundar Lal Poddar R/o- Mohalla-Naya Tola
Fulwari, P.O., P.S., and District- Katihar

... .. Petitioner/s

Versus

1. Durga Devi Tiwary W/o- Late vinod Kumar Tiwary R/o- Mohalla- Raj High School road, Pakur, P.O., P.S.,and District- Pakur.
2. Sunita Kumari D/o- Late Vinod Kumar Tiwary R/o- Mohalla- Raj High School road, Pakur, P.O., P.S.,and District- Pakur.
3. Anita Kumari D/o- Late Vinod Kumar Tiwary R/o- Mohalla- Raj High School road, Pakur, P.O., P.S.,and District- Pakur.
4. Uma Kumari W/o- Pradeep Dube R/o- village- Dilarpur, P.s.- Maihari,District- Katihar
5. Sanju Kumari W/O- Birendra Prasad Bhagat R/o- shiv Mandir Chowk, Katihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Sr. Advocate Mr. Harsh Vardhan, Advocate Mr. Anshuman Jaipuriyar, Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 07-07-2025

Heard the learned senior counsel for the petitioner and

I intend to dispose of the present petition at the stage of admission itself.

02. Despite valid service of notice upon the respondents, there is no representation on behalf of the respondents.

03. Learned senior counsel appearing on behalf of the petitioner submits that the petitioner is aggrieved by the order

dated 28.11.2018 passed by the learned Sub Judge-I, Katihar in Title Suit No. 443 of 2013 whereby and whereunder the learned trial court rejected the petition dated 06.08.2018 filed by the petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') for impleadment of the respondent no. 5 and defendant 2nd party in the title suit.

04. Learned senior counsel further submits that the plaintiff/petitioner has filed the suit for specific performance of contract as the plaintiff/petitioner entered into an agreement for purchase of a piece of land with one Ajay Kumar Tiwari, but said person died before executing the sale deed and the defendants are his heirs/legal representatives, who have been made parties. When the written statement was filed by defendant no. 1, she disclosed that she has sold out 05 dhurs land of suit property in favour of respondent no. 5, Sanju Kumari. Learned senior counsel further submits that, however, the learned trial court without considering the fact that a subsequent purchaser should be made party, if the outcome of the case is going to affect her right, did not allow the application and refused to implead respondent no. 5 as party in the suit. Learned senior counsel referred to the decision in the case of

Kasturi v. Iyyamperumal, reported in **(2005) 6 SCC 733**,

wherein the Hon'ble Supreme Court in Para-7 held as under:

“7. In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 sub-rule (2) of the CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party.”

05. Learned senior counsel further submits that the impugned order has been passed against the settled principles of law as propounded by the Hon'ble Supreme Court and the same is not sustainable and is fit to be set a side.

06. Perused the record.

07. Having regard to the facts and circumstances and submission made, except for the averment of the petitioner which finds mention in the impugned order that the vendor of the respondent no. 5 claims her title over the suit land, the learned trial court proceeded in the matter on entirely different manner holding that there was no agreement between the plaintiff/petitioner and respondent no. 5. From perusal of the plaint and written statement, I find that the defendant no. 1 claiming the land which is not entirely against the title of the person who executed the agreement of sale in favour of the plaintiff/petitioner. Yet, as per her case, after death of Nirmala Devi, the answering defendant along with Ajay Kumar Tiwary got 2.5 *Dhurs* of land each from 10 *Dhurs* land left behind by Nirmala Devi. Thus, it is claimed that the heirs/legal representatives of Nirmala Devi were having 2.5 *Dhurs* of land each in their share.

08. Whatever may be the case put forward by defendant no. 1, vendor of respondent no. 5, when the respondent no. 5 is going to be affected by the outcome of Title Suit No. 443 of 2013, it is proper that she should be added as party in the present case, so that the matter would be decided

effectually and completely. Even if the respondent no. 5 is not a 'necessary party', she is a 'proper party' for all practical purposes. Further, adding respondent No.5 as a party to the suit, it does not appear that it would alter the nature of the suit or create any new cause of action. Mandate of Order 1 Rule 10 (2) of the Code is clear. The discretion vested upon the Court is that if any person whose presence is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, such person should be added as party. In the present case, in absence of respondent no. 5, an effective order can be made but her presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

09. 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 observed as under:-

“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 disputes 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."

(Emphasis supplied)

10. Recently, the Hon'ble Supreme Court in the case of ***J. N. Real Estate Vs. Shailendra Pradhan & Ors***, reported in ***2025 SCC OnLine SC 1015*** in Para-29 held as under:

"29. It was observed that the court may exercise discretion in impleading a person who is a 'proper party' upon an application by a non-party to the suit for specific performance. If the court is of the view that the impleadment of such a proper party will alter the nature of the suit or introduce a new cause of action, it may either refuse to implead such person or order for his impleadment on certain conditions. However, even otherwise, the court would not be precluded from impleading a 'proper party' unconditionally

*in its discretion. The relevant observations rendered in **Mumbai International Airport** (supra) read thus:*

“24.4 If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides, etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and the court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if D claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of P representing that he is the co-owner with half-share, and P files a suit for specific performance of the said agreement of sale in respect of the undivided half-share, the court may permit the other co-owner who contends that D has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the defendant vendor to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if

any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject-matter of the suit for specific performance, and that it will decide in the suit only the issues relating to specific performance, that is, whether the defendant executed the agreement/contract and whether such contract should be specifically enforced.
.....”

11. In the light of aforesaid discussion, I am of view that the learned trial court has committed error of jurisdiction while passing the impugned order dated 28.11.2018. Hence, the impugned order dated 28.11.2018 is set aside and the petition dated 06.08.2018 filed by the plaintiff/petitioner for impleadment of respondent no. 5 as party-defendant in Title Suit No. 443 of 2013 is allowed.

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

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.07.2025
Transmission Date	NA