

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2076 of 2017

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Durga Prasad Son of Late Narayan Prasad, Resident of Mohalla Kalibag,
Nunia Toli near Naka no.3, P.O. and P.S. Bettiah, District West Champaran

... .. Petitioner/s

Versus

1. Smt. Anjali Devi Wife of Late Jawahar Prasad, Resident of Mohalla-Purani Gudari, P.O. and P.S. Bettiah, District West Champaran. At Present Care of Birendra Praasd, Gaighat, Nayagaon, Patna City, P.S. Alamganj, District-Patna.
2. Smt. Kunti Devi, Wife of Sri Mohan Lal Prasad, Daughter of Late Jawahar Prasad Gupta Resident of Gyan Babu Chowk, Miskaut Sonarpatti, P.O. and P.S. Motihari, District East Champaran.
3. Smt. Subhadara Devi, Wife of Sri Akhileshwar Kumar Pandey, Resident of Village-Jabdaul, P.O. Chanpatiya, District West Champaran
4. Sri Birendra Prasad, Son of Late Saryug Saw, Resident of Village-Masaurhi, Lakhibag. At Present Resident of Gaighat, Nayagaon, Patna City, P.S. Alamganj, District Patna
5. Most. Basanti Devi, Wife of Late Sheojee Prasad Gupta, Resident of Mohalla-Kalibagh near Harnath School, P.O. and P.S. Bettiah Town, District-West Champaran
6. Kiran Devi, Wife of Sri Nand Lal Prasad, Resident of Mohalla-Kalibagh, Ward No.4, Bettiah, P.S. Bettiah Town, District West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jitendra Prasad Singh, Sr. Advocate Ms. Sripriya Sinha, Advocate Mr. Rajeev Kr., Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 08-07-2025

Heard learned senior counsel for the petitioner.

2. The petitioner is aggrieved by the order dated 19.07.2017 passed by learned Sub Judge-VII, Bettiah (West Champaran) in Title Suit No. 237 of 2010 whereby and whereunder the application of the intervenor/respondent no. 6



filed under Order 1 Rule 10(2) of the Code of Civil Procedure has been allowed and she has been made defendant in the suit filed by the plaintiff/petitioner for specific performance of contract.

3. Learned senior counsel submits that the petitioner has filed suit for specific performance of contract and during the pendency of the suit, the subject matter of the agreement of sale has been sold out to different persons and the intervenor is the third purchaser. Previous purchasers have already been made parties and if this trend continues, the intervenors would continue to join the suit as defendants and the suit would never be decided.

4. Whatever might be the submission of the learned senior counsel of the petitioner with regard to delay in the disposal of the suit and impleadment of intervenors to keep on purchasing the suit property, it is apparent that such purchasers have a direct interest in the subject matter of the suit and the Hon'ble Supreme Court in the case of ***Kasturi v. Iyyamperumal***, reported in **(2005) 6 SCC 733** held in paragraph nos. 6 and 7 as under:-

“6. Let us therefore confine ourselves to the provision of Order 1 Rule 10 sub-rule (2) of CPC which has already been quoted hereinabove. From a bare perusal of sub-rule (2) of Order 1 Rule 10 of the CPC, we find



that power has been conferred on the Court to strike out the name of any party improperly joined whether as plaintiff or defendant and also when the name of any person ought to have been joined as plaintiff or defendant or in a case where a person 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. In the present case, since we are not concerned with striking out the name of any plaintiff or defendant who has been improperly joined in the suit, we will therefore only consider whether the second part of sub-rule(2) [Order 1 Rule 10 of the CPC](#) empowers the Court to add a person who ought to have been joined 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.

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.”



Evidently, the case of the defendants/respondent no. 6 is covered by the decision of the Hon’ble Supreme Court in the case of ***Kasturi*** (supra). Therefore, I do not find any infirmity in the impugned order dated 19.07.2017 and hence, the same is affirmed.

5. Accordingly, the present petition is dismissed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.07.2025.
Transmission Date	N/A

