

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1996 of 2017

1. Kamshwar Singh
2. Amarnath Singh Both Sons of late Deonandan Singh Resident of Village and P.O.- Purushotampur, P.S.- Maniari Kurhani, Distt.- Muzaffarpur.

... .. Petitioner/s

Versus

1. Basmati Devi W/o late Ram Sakal Thakur, M/O Ram Sevak Thakur, Mukhia Gorakh Thakur, Resident of Village and P.O.- Purushottampur, Anchal-Kurhani, P.S.- Maniyari, District- Muzaffarpur.
2. The State of Bihar, through Collector, Muzaffarpur.
3. Circle Officer, Kurhani, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Sinha, Advocate Mr. Shyam Sunder Pandey, Advocate
For the State	:	Mr. Sajid Salim Khan, Sr. Advocate, SC-25 Mr. R.P.N. Tiwari, AC to SC-25
For the Respondent no.1:	:	Mr. Yashraj Bardhan, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 29-07-2025

Heard learned counsel for both the parties.

02. The petitioners are aggrieved by the order dated 08.09.2017 passed by learned Munsif, West Muzaffarpur in Title Suit No. 14 of 2015 whereby and whereunder the learned Munsif allowed the application of intervenor respondent no. 1 as defendant 2nd party.

03. Learned counsel for the petitioners submits that the petitioners are plaintiffs before the learned trial court and has filed a suit for confirmation of possession over the Schedule 1 land of the plaint and also sought permanent injunction



restraining the defendants from interfering in peaceful possession of the plaintiffs over the Schedule I land of the plaint, situated in village Purushottampur, P.S. Kurahni at present Maniari, Dist. Muzaffarpur, C.S. Khata No.- 183, C.S. Plot No. 1041, R.S. Khata No. 598, R.S. Plot No. 2255 and 2256, Area- 22 decimal each.

04. Learned counsel further submits that the suit has been filed against State of Bihar as the employees of State of Bihar threatened to interfere with the peaceful possession of petitioners over Schedule I land of the plaint. Learned counsel further submits that the suit land is the purchased land of the plaintiffs as father of the plaintiffs purchased the said land on 09.08.1955 and 10.02.1956 by way of registered sale deeds. Learned counsel further submits that in Revisional Survey Khatiyan, the suit land as described in Schedule 1 land of the plaint, was wrongly and fraudulently recorded in the name of “Bihar Sarkar”. During pendency of this suit and when the evidence of the parties have been recorded, at the stage of argument, the respondent no. 1 filed an application dated 21.07.2017 seeking impleadment in the suit as defendant. The respondent no. 1 claimed that the suit land was acquired by the intervenor/respondent from the ex-landlord through settlement



much before the Revisional Survey and she has been coming into its peaceful possession but in Revisional Survey the disputed land was wrongly and illegally recorded in the name of State of Bihar. The intervenor/respondent further submitted that she filed a petition before the Consolidation Officer, Kudhani under Section 10 (2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act and the Consolidation Officer vide order dated 28.12.1978 directed for recording the name of the respondent no. 1 in the *Kaifiyat* Column as *Bakabjedar*. Learned counsel further submits that however the learned trial court did not consider for a moment that the plaintiffs have sought no relief against the respondent no. 1 and an effective decree can always be passed even in absence of intervenor-respondent. Even the claim of the intervenor-respondent no. 1, which is based on a forged document, is palpably bogus since document was a torn receipt which was unclear and did not show anything in favour of the intervenor/respondent. However, the Consolidation Officer asked for land survey report from Amin as the State of Bihar was unrepresented before it. From the said report of Amin, the Consolidation Officer held that the intervenor/respondent was in possession over the suit land of Plot No. 2255 and 2256 but the Amin report was collusive and



the intervenor/respondent never came into possession of the suit land. No documents have been filed by the intervenor/respondent worth its name in support of her claim and the State has also been helping the intervenor in frustrating the claim of the plaintiffs/ petitioners.

05. Learned counsel referred to the decision of ***Ram Lochan Sharan Vs. Sri Balmukund Yadav*** reported in **2006(4) PLJR 65** wherein learned Single Judge of this Court held that the plaintiff is master of his own litigation and intervenor cannot dictate or lay down the terms of litigation.

Learned counsel further referred to the case of ***Kauleshwai Devi @ Kauleshwari Gowalin Vs. State of Bihar & Ors.*** reported in **2014(3) PLJR 10** wherein the learned Single Judge held that plaintiff being *dominus litis* may choose the person against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. This decision was based on the decision of the Hon'ble Supreme Court in the case of ***Kasturi v. Iyyamperumal, (2005) 6 SCC 733*** wherein it has been held that Legislature clearly meant that only the controversies raised as between the parties to the litigation must be gone into, that is to say, controversies with regard to the right which is set up and the relief claimed on



one side and denied on the other and not the controversies which may arise between the plaintiffs or the defendants *inter se* or questions between the parties to the suit and a third party.

Learned counsel referred to the similar proposition which was held in the case of ***Manoj Kumar Vs. Patna Municipal Corporation*** reported in ***2014(4) PLJR 300***.

Learned counsel further referred to the case of ***Anil Kumar Vs. Ramuday Singh*** reported in ***2012(3) PLJR 323*** in support of his claim wherein the learned Single Judge did not allow the impleadment of the intervenor as the ground claimed for impleadment was easementary right and holding that the intervenor has no direct or legal interest in the disputed property and was not a necessary party, the learned Single Judge denied the claim of the intervenor after holding that there must be a right to some relief against such party in respect of the controversies involved in the proceedings and no effective decree can be passed in absence of such party.

Learned counsel further submits that similarly in the present case no relief has been sought against the intervenor/respondent no. 1 and it cannot be said that no effective decree can be passed in absence of the intervenor/respondent no. 1. Therefore, the intervenor/respondent no. 1 is



neither a necessary party nor a proper party and therefore the impugned order dated 08.07.2017 is not sustainable and the same needs to be set aside.

06. Learned counsel appearing on behalf of the intervenor/respondent no. 1 however contended that there is no infirmity in the impugned order. It is evident from the Revisional Survey Kahtiyani that the intervenor is in possession of the suit land and in support of her claim survey documents were filed by the intervenor and this fact finds mention in the impugned order and the learned trial court has noted that the proposed intervenor in support of her claim filed photocopy of *Parcha* with respect to R.S. Plot No. 2255 and 2256, photocopy of *raiya* area slip with respect to R.S. Plot No. 2255 and 2256, photocopy of *chakbandi kahtiyani* and photocopy of order dated 28.12.1978. So it cannot be said that she has not filed any document in support of her claim. If the intervenor/respondent is in possession, she has every right to get herself impleaded in the suit since she is going to be directly affected if a decree is passed in favour of the plaintiff/petitioners. Moreover, the claim of the intervenor/respondent has been sustained by the Consolidation Officer who recorded the finding that her name should be entered in the *Kaifiyat* Column for being in



possession of the suit land. In support of his contention, learned counsel referred to paragraph no. 13 and 14 of the case of ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.***, reported in ***(2010) 7 SCC 417***, which reads as under:-

“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.”

Learned counsel, thus, submitted that learned trial court rightly allowed the impleadment application as the respondent no.1 is necessary party having right title and interest over Schedule I property of the plaint and her interest would be jeopardized if she is not made party and it would also result in multiplicity of litigation. Thus, learned counsel submits that there is no illegality or infirmity in the impugned order.

07. Learned senior counsel appearing on behalf of the State of Bihar supports the contention of the learned counsel for the respondent no. 1. Learned senior counsel submits that if the intervenor/respondent is in possession and she has got the interest in the suit property, the learned trial court has rightly impleaded her as defendant.

08. By way of reply, learned counsel appearing on



behalf of the petitioners submits that it is strange case where State is taking side whereas the State should be neutral in the matter, if the records of right shows title of the State.

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

10. Order 1 Rule 10(2) of the Code of Civil Procedure 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.”

The Hon’ble Supreme Court in the case of ***Mumbai International Airport (P) Ltd.*** (supra) has held that 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. On the other hand, 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. It has further been held that Order 1 Rule 10 (2) CPC is not about the right of a non-party to be impleaded as a party, but is about the judicial discretion of the court to strike out or add parties at any stage of a proceeding.

11. The Hon'ble Supreme Court in the case of ***Kasturi*** (supra) 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.

12. 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.



13. Coming back to the facts of the case, the plaintiffs have brought the suit asserting their right over the suit land as title holder on the basis of some sale deed but surprisingly the plaintiffs did not challenge the Revisional Survey Khatiyani entry although their possession was being disturbed by the Government officials on the basis of survey entry in the Revisional Survey Khatiyani and the plaintiffs did not seek any relief against such entry. Without seeking any relief against the Revisional Survey entry when doubt has been created over title, they approached the Court merely seeking confirmation of possession over the suit property. In normal circumstances, any person who has got right, title and interest over suit property, and if the same is clouded by such entry, would naturally challenge the entries but the same was not done by the plaintiffs/petitioners. Moreover by the order of the Consolidation Officer dated 28.12.1978, it appears that the intervenor/respondent no. 1 was found to be in possession and her name was ordered to be entered in *Kaifiyat* Column of Khatiyani as *Bakabjedar*. If on the basis of the said document and if the respondent no. 1 has claimed impleadment in the suit of the plaintiffs, I am of the view that she has shown sufficient interest in the subject matter of the suit and therefore, the Court



has rightly impleaded her as party defendant.

14. In the light of the discussion made hereinabove, I do not find any infirmity or error of jurisdiction of the learned trial court and impugned order dated 08.09.2017, is affirmed.

15. Accordingly, the present petition is dismissed.

16. However, it is made clear that any observation made hereinabove would not cause prejudice to either of the parties.

17. Moreover, it is a suit of 2015 and 10 years have since elapsed and the matter has been kept pending, it is appropriate that learned trial court be directed to dispose of Title Suit No. 14 of 2015 at the earliest and preferably within six months from the date of receipt/production of a copy of this order.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
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